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THE NEW REPUBLIC

A Journal of Politics and the Arts

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Who's Your Donor?

In a 1998 editorial that was otherwise skeptical of campaign finance reform, *The Wall Street Journal* wrote, "If there's one thing all the players agree on it's the need for better disclosure of contributions and a crackdown on violators." And who, indeed, could object to the principle—more necessary than ever after the Supreme Court's ruling in *Citizens United* paved the way for corporations to get more involved in funding elections—that voters should know who is paying for political ads?

Well, it turns out a lot of people object—including *The Wall Street Journal*'s editorial writers circa 2010. This month, the *Journal* declared that Democrats are pushing disclosure requirements in order to transform "corporate donors into political piñatas, embarrass them publicly, hurt their business—and ultimately convince them that the price of donating to nonliberal groups is too high." It isn't just the *Journal* that now takes a different tone on the issue. In June 2000, John McCain endorsed "meaningful, balanced disclosure legislation" that would address "the most egregious examples of those seeking to avoid the public's scrutiny." This summer, he joined the rest of his party in voting to block a Democratic bill that would have barred most corporations from funding elections anonymously.

Candidates, of course, still have to disclose where their money comes from, and it is still illegal for corporations to donate directly to campaigns. The problem is that certain advocacy groups—which can run ads backing or opposing candidates, and which businesses or any other organizations can fund—do not have to disclose the sources of their money. And so we have no idea which groups are being funded by corporations, or how widespread the phenomenon is.

The notion that this situation is unacceptable—that corporations and unions spending money on electoral politics should be required to disclose their activities so that voters can know the source of any given political ad—seems utterly intuitive. If we must accept that corporations have a right to get even more involved in elections than they were before *Citizens United*, is it really so unreasonable to demand that they do so openly? The argument for disclosure was probably best expressed by, of all people, Antonin Scalia. Scalia may have voted in *Citizens United* to strike down limits on corporate giving, but even he appreciates the role that transparency ought to play in elections. "I do not look forward," he has written, "to a society which, thanks to the Supreme Court, campaigns anonymously and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism." The public, not surprisingly, agrees with this basic principle: According to a recent poll, 84 percent of voters believe they have a right to know who is paying for ads supporting candidates.

Democrats' bid to remedy this situation, to be sure, is flawed. Their bill, known as the Disclose Act, would exempt some organizations—which are large enough, old enough, and don't receive more than 15 percent of their funding via corporations or unions—from the requirement that they reveal their donors. This would protect the National Rifle Association, and likely other powerful groups, such as the Sierra Club, from having to play by the same rules as newer, smaller groups. Republicans have also raised other concerns worth considering. But the GOP's approach has hardly been constructive: It filibustered a vote to allow debate on the proposed legislation, denying both parties an opportunity to modify and improve it. And it has offered no serious alternatives.

The conservative case against disclosure seems to rest on a bizarre interpretation of the First Amendment, under which we have both freedom of speech *and* freedom from the consequences of that speech. Conservatives are usually fans of personal responsibility. In this case, though, they apparently believe that corporations should not have to deal with the prospect of consumers taking their business elsewhere if they disagree with a company's politics.

As a result, we now find ourselves in a political season where groups with names like the 60 Plus Association or Americans for Prosperity fill up the airwaves—and we have no idea where they got their money. As *Slate*'s David Weigel notes, 60 Plus has spent around $6 million buying deeply misleading ads accusing various Democrats of voting to slash Medicare—a substantial chunk of change for an organization that had only raised about $3.7 million from July 2007 to July 2009, when it reported a net worth of around negative $700,000. Where did all the new money come from? We don't know, and 60 Plus isn't telling. It doesn't have to. ◆

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Sympathy for the Level

Who should finance government: Paris Hilton or her maid?

JONATHAN CHAIT

Not long ago, House Minority Whip Eric Cantor, considered something of an "ideas man" among Republicans in Washington, was asked to sum up his party's philosophy. Here is how Cantor boiled it down:

> It's about providing an even playing field for opportunity, not the government sitting here saying, "This person here's too successful, this one's not, I'm gonna take from this one and give to that one." That's the principle.

Note that Cantor did *not* define his party's philosophy as opposition to big government. He defined it as opposition to redistribution from rich to poor. In that sense, he was admirably straightforward in articulating the modern GOP's flaccid commitment to shrinking government and its unshakeable commitment to opposing redistribution.

That principle lies at the heart of the next big legislative fight, over the extension of those parts of the Bush tax cuts that only benefit families earning more than $250,000 per year. In the Republican mind, President Obama's opposition to those tax cuts is nothing more than a punitive measure against the rich. "The administration believes that we ought to pit one group of people—those who have less—against those who have more and vilify those who have been successful," said Cantor. Since many people actually seem to believe that liberals favor higher tax rates on the rich primarily as a form of punishment, let me explain the actual rationale for progressive taxation.

Some liberals believe that income inequality is intrinsically problematic. Studies suggest that rising inequality tends to fuel financial crises—the middle class borrows beyond its means in a frantic race to keep pace with the rising living standards of the rich. Note that this argument says nothing about the rich being un-virtuous or deserving of punishment. It does, however, imply that, against a backdrop of rising inequality, reducing the income of the rich is useful, regardless of how you use the revenue.

TRB
From Washington

And yet, you don't need to argue for pulling down the rich in order to justify progressive taxation. The more durable rationale is utilitarian. It would be nice if nobody had to pay taxes. Given that we do, though, shifting a greater share of the burden onto the rich causes less hardship. (Raise Paris Hilton's taxes by 1 percent and that's one less vacation home for her grandchildren; raise her maid's taxes by 1 percent, and her kids are sweltering because they can't afford air-conditioning.) Now, at some point, you can pile the tax burden on the rich so high that you impair economic growth. But recent evidence suggests the Clinton-era tax rates proposed by Obama would have minimal economic impact.

The key thing about this rationale is that it's premised on the government needing money to finance its programs. Unfortunately, the tax debate tends to treat the social justice question as entirely separate from the fiscal needs of the federal government. A recent *Washington Post* news story revealed this tic of conventional thought. "For months, President Obama has stressed the budgetary rewards of eliminating tax breaks for the wealthy," reported the *Post.* "But many Democrats see a more fundamental reason to let the Bush-era tax cuts expire in January: narrowing the growing divide between the rich and everyone else." These needn't be separate issues.

The government does not have enough revenue to finance its spending. (And this would be true even if the Republicans' proposed unspecified spending cuts were enacted *in toto*.) Raising taxes on income over $250,000 may cause some pain for the highest-earning 1 percent, but raising taxes on those earning less would cause even more pain. This logic, after all, was the original justification for progressive taxation.

Conservative rhetoric tends to treat the question of taxing the rich as unrelated to the demands of funding government. Republicans do this because polls show that the trade-offs required by lower taxes for the rich—higher taxes for the non-rich or reduced spending on government programs—are wildly unpopular. And so they proceed as if no trade-offs are required at all.

Presenting higher taxes for the rich as a punitive measure is a way of concealing such trade-offs. Republicans, the *Post* article noted, maintain "the correct response to income inequality is not more taxes on the wealthy but greater opportunity for those at the bottom of the income scale." But of course the question isn't whether to increase taxes on the rich or provide "opportunity"—generally unspecified—for the non-rich. It's whether lower taxes for the rich are worth the cost of higher taxes or lower benefits for everyone else.

The moral principle expressed in opposition to progressive taxation by Cantor, and many other conservatives, holds that charging the rich higher rates is discriminatory. This would imply that, out of fairness, we must charge all taxpayers the same rate.

Well, it's *a* principle. It does not, however, appear to be the Republicans' principle. The most specific explication of the GOP governing agenda is the "Roadmap" authored by ranking Budget Committee member Paul Ryan. Few Republicans have openly endorsed the "Roadmap," on account of its many unpopular provisions, but it is widely understood to represent the party's policy *beau idéal*, with the only objections centering on political feasibility.

Ryan's "Roadmap" would slash taxes on the rich and raise them on the poor and middle class. Under his plan, people in the middle of the income distribution would pay 18 percent of their income in federal taxes. Upper-middle-class taxpayers in the eightieth to ninety-fifth percentiles would pay 23 or 24 percent of their income in federal taxes. Above that level, tax rates would plummet, to the point where the richest 0.1 percent of taxpayers would pay an average federal rate of less than 11 percent.

Conservatives may object to a tax code that transfers resources from the rich to the middle class, but they thrill to the prospect of a tax code that does the opposite. The easiest way for them to escape the contradictions of their hypocrisy is to let them frame the issue as an isolated question of what tax rate the rich deserve to pay. They should instead have to answer: compared to what? ◆

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BASED ON PHOTO BY ASSOCIATED PRESS

Cover illustration by Jim Salvati

ADVERTISING SALES AND MARKETING

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THE NEW REPUBLIC (ISSN 0028-6583), Vol. 241, Number 18, Issue 4,893, November 11, 2010. (Printed in the United States on October 20, 2010.) Published bi-weekly (except for skipped publication dates of January 21, March 4, April 22, August 5, August 26, September 16, October 7, November 25, December 16 & 23, 2010) at 1331 H Street, NW, Suite 700, Washington, D.C. 20005. Telephone (202) 508-4444. Yearly subscriptions, $79.97; foreign, $119.97 (U.S. funds); Canada, $99.97 (U.S. funds). Back issues, $8.00 domestic and $10.00 foreign/Canada (includes postage & handling).

© 2010 by TNR II, LLC.

Periodicals postage paid at Washington, D.C., and additional mailing offices. Rights and permissions: fax (202) 204-4871. Indexed in Readers' Guide, Media Review Digest. For hard copy reprints, call (202) 508-4444. Microform, Canadian Periodical Index, and CD-ROM are available through ProQuest, 300 N. Zeeb Road, Ann Arbor, MI 48106. Telephone (800) 521-0600. Postmaster: Send changes of address to The New Republic, P.O. Box 15818, North Hollywood, CA 91615-5818. Member, BPA Worldwide. Send letters and unsolicited manuscripts to letters@tnr.com. Poetry submissions must be e-mailed to poetry@tnr.com.

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The Mall

Could punishing sexual surveillance endanger free speech?

Privacy Strikes Back

How to stop cyber-bullies.

In the era of Facebook and YouTube, it's often said that privacy is dead. The recent suicide of Tyler Clementi seemed only to reinforce this conclusion. Clementi, an 18-year-old Rutgers student, killed himself after his roommate secretly webcast his dorm-room intimacies and publicized the live-stream on Twitter. ("I went into molly's room and turned on my webcam. I saw him making out with a dude. Yay.") Indeed, the entire tragedy was transmitted via social media: On September 22, Clementi posted a note on his Facebook page: "Jumping off the gw bridge sorry."

Clementi's death was only one of several recent cases involving extreme invasions of privacy that were made possible by the ubiquity of webcams and online social networks. In Pennsylvania, a school district gave free MacBook laptops to students and then allegedly used the built-in webcams to spy on some students at home. At Duke University, a former student named Karen Owen composed a mock thesis detailing her sexual encounters with 13 athletes, complete with a PowerPoint slideshow of names, photographs, and graphic descriptions of their performances. Owen e-mailed her narrative to a few friends, who forwarded it to their friends, after which it went viral and was published by the snarky sports website *Deadspin*. The media swiftly latched onto Clementi's death, in particular, as evidence that personal surveillance technologies have spun so far out of control that nothing can reign them in.

What is fascinating about these cases, however, is how quickly a legal response emerged. Within days, New Jersey prosecutors announced that Clementi's roommate, Dharun Ravi, and a friend had been charged with criminal invasion of privacy, carrying a potential jail sentence of up to five years. The Pennsylvania school district paid more than $600,000 to settle two lawsuits. And Karen Owen and *Deadspin* could be sued for invasion of privacy as well.

The responses to the first two cases are the good news. They show that even in the age of Facebook, there is legal recourse available for the most offensive incursions on our private lives. But the Duke case is more complicated, because it suggests that remedies for invasions of privacy can also threaten free speech. With our understandable desire to protect privacy online, do we risk going too far?

One country that the United States should *not* use as a model in balancing privacy and free expression is Argentina. Last year, an Argentinian judge held Google and Yahoo liable for causing "moral harm" and violating the privacy of Virginia Da Cunha, a pop star, actress, and lead singer of a band called the Virgin Pancakes. The judge ordered Google and Yahoo to pay 50,000 pesos each in damages simply because their search results had included pictures of Da Cunha that were linked to erotic content. The ruling was overturned on appeal in August, but there are at least 130 similar cases pending in Argentina to force search engines to remove or block offensive content, according to *The New York Times*. In the United States, search engines are protected by the Communications Decency Act, which immunizes Internet service providers from being held liable for content posted by third parties. But, as liability against search engines expands abroad, it will seriously curtail free speech: Yahoo says that the only way to comply with injunctions is to block all sites that refer to a particular plaintiff.

In the United States, courts and legislatures have generally struck a better balance by limiting liability for invasions of privacy to egregious cases of sexual surveillance. Under New Jersey law, for example, it's a crime if someone "photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person's consent and under circumstances in which

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a reasonable person would not expect to be observed." That's what Tyler Clementi's roommate, Dharun Ravi, did with his webcam, although he certainly didn't intend the suicide that followed. Rutgers students may be debating whether the five-year jail sentence that Ravi faces is too harsh, but there's widespread agreement that he deserves to be punished. Similarly, the Pennsylvania school district that used a webcam on a school-issued MacBook to spy on a student in his bedroom quickly settled the lawsuits. Everyone agrees that secretly filming students in various states of undress at home isn't a reasonable way of locating lost or stolen laptops.

Sexual surveillance cases become trickier—and potentially a greater threat to free expression—when they involve written descriptions of intimate activities, as in the Duke case. Most state courts consider it a civil offense to publish details about someone's private life if the material would be highly offensive to a reasonable person and is not of legitimate concern to the public. Because details of their sexual performances would certainly qualify under that standard, the Duke athletes could plausibly sue both Karen Owen and *Deadspin* for invading their privacy. Judges might disagree, however, about whether Owen's e-mail distribution to a few friends should qualify as a form of publication and whether *Deadspin* was the first platform to make the material widely available—both requirements for liability. It's hard to say whether Owen should be held liable, since she didn't intend to circulate her narrative to a mass audience, but the mere threat of lawsuits could deter less careless authors from publishing explicit memoirs in the future.

The Duke case in many ways resembles the lawsuits sparked by Jessica Cutler, a former staffer for Ohio Republican Senator Mike DeWine who blogged as the Washingtonienne. In 2004, Cutler chronicled her sexual experiences with six men whom she identified by their initials, including details of their performances and proclivities. One of the men, Robert Steinbuch, a fellow DeWine staffer, sued Cutler—as well as Hyperion, which published Cutler's tell-all book—for invasion of privacy. In 2006, a district judge in D.C. refused to dismiss the lawsuit against Cutler, who went bankrupt, and, after the U.S. Court of Appeals for the Eighth Circuit refused to dismiss the lawsuit against Hyperion two years later, the publisher settled with Steinbuch. I asked Steinbuch, now a law professor at the University of Arkansas, whether he was glad he brought the lawsuits. "Absolutely," he told me. "What these courts did was wonderful, and absolutely it was a vindication, although it was a long time coming."

The outrage over the Clementi suicide, and the attendant anxieties about protecting our private lives from the march of technology, comes just as the Supreme Court is considering two important privacy cases that could expand liability for invasions of privacy beyond sexual surveillance—and seriously threaten free speech in the process. The Court recently heard a case involving an invasion of privacy suit against the Westboro Baptist Church, which picketed the funerals of American soldiers with offensive signs, such as "GOD HATES THE U.S.A." (The church views the deaths of soldiers as God's punishment of the United States for tolerating homosexuality.) A lower court properly dismissed the suit on the grounds that the privacy rights of the soldier's family were trumped by the free-speech rights of the protesters, who were kept about 1,000 feet away from the funeral—so far away that the family wasn't aware of them until after the ceremony. If the Supreme Court disagrees, it would become too easy for people who are offended by protests—either online or off—to sue for invasion of privacy, even when they're not being stalked or threatened.

In another case, the Supreme Court will decide whether a California law that restricts violent video games violates the First Amendment. The law provides civil penalties of up to $1,000 for selling or renting video games to minors if the games depict "killing, maiming, dismembering, or sexually assaulting an image of a human being" in a manner that appeals to the minors' "deviant or morbid interest." It makes sense to try to limit the access of minors to depictions of extreme violence, but the issue is complicated by the obvious threats to free speech. The dangers of giving governments the power to ban violent video games or videos were foreshadowed in a recent Italian case where three Google executives were convicted of breaking Italian privacy laws after a video of a disabled boy being bullied was posted on Google. Italian prosecutors successfully argued that the boy's privacy was violated and that Google should have taken the videos down more quickly. Once the category of videos that can be banned expands beyond the narrow category of sexual voyeurism, governments have too much discretion to censor any videos that someone finds offensive.

At a time of rapid technological change, citizens are understandably concerned about whether the law is moving fast enough to keep up with new devices capable of recording or publicizing private activities. But the law will always have to react to incursions after the fact, prohibiting only the most shocking invasions while tolerating the rest. As it turns out, the balance between privacy and free speech that the United States has struck in the past is a sensible model for the future. People should be able to sue for invasions of privacy when they're victimized by extreme sexual surveillance, but almost nothing else. That's a bright line that the rest of the world has been reluctant to embrace; now it's up to the Supreme Court to preserve it.

Jeffrey Rosen

Department of Corrections

"Park Here" (September 2) misspelled the last name of landscape architect Frederick Law Olmsted. We regret the error.

Free Johnson

The next Ron Paul.

There are certain shibboleths in presidential politics that even the most forthright candidates feel obliged to repeat, certain topics they feel compelled to avoid. Yet talk to former New Mexico Governor Gary Johnson, the unorthodox 2012 GOP hopeful, and those rules go out the window. Ask about church, and he says he doesn't go. "Do you believe in Jesus?" I ask. "I believe he lived," he replies with a smile. Ask about shifts in position, and he owns up to one. "I changed my mind on the death penalty," he tells me. "Naïvely, I really didn't think the government made mistakes." Ask about his voting history, and he volunteers (without regrets) that he cast his first presidential ballot for George McGovern ("because of the war"). Ask about his longstanding support for marijuana legalization, and he recalls the joy of his pot-smoking days. "I never exhaled," he says. (An avid athlete, Johnson forswore marijuana and alcohol decades ago when he realized they were hurting his ski times and rock-climbing ability.)

Like Ron Paul, whom he endorsed in 2008, Johnson is an unabashed libertarian—

ANTHONY RUSSO

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GOP presidential hopeful Gary Johnson on his pot-smoking days: "I never exhaled."

and, in some ways, a purer one (he's pro-choice, pro-free trade, and pro-immigration). So, while he's no culture warrior or foreign policy hawk—he opposed the war in Iraq and the troop surge in Afghanistan—he outflanks any Republican on fiscal issues, proposing an immediate, across-the-board 43 percent spending cut. "We're on the precipice," he says, of the country's finances. To illustrate what lies in the abyss, at times he flashes his favorite prop: a $100 trillion bill from Zimbabwe that he keeps in his wallet.

Over the past ten months, Johnson has taken his libertarian gospel on the road, speaking to conservative campus groups, Tea Party rallies, and Republican conferences in over 30 states. He has appeared on countless radio and TV programs—everything from "Hannity" to "The Colbert Report"—and is putting the finishing touches on a book. Johnson isn't merely testing the presidential waters; several Johnson confidants told me that nothing—not even another Ron Paul campaign—will stop him from running. "There's no waiting or seeing," says one. "It's a done deal."

"Everybody's been aware of it, even during the last campaign," says Paul, whom Johnson informed of his intentions in April 2008. "I don't remember when anybody didn't assume that he would run for president." Fortunately for Johnson, Paul, while not ruling out a second act, has shown little appetite for one. ("I have made no plans," he told me.) And if he doesn't run, he'll "most likely" throw his weight behind Johnson. "I can't imagine endorsing anybody else," he says. The path, then, looks clear for Gary Johnson to become the Ron Paul of 2012—with one key difference: In the last election, wherever he campaigned, the dour Paul found himself surrounded by a traveling show—a motley movement of potheads, conspiracy theorists, and other colorful characters. This time, Gary Johnson *is* the show.

At age 57—sporting Oakleys, blue jeans, and a white t-shirt—Gary Johnson still evokes the carefree irreverence of a college undergrad. "I was your C student," says the former political science major. "I paid attention in the classes that were about how to get elected." And, in 1994, it paid off. "He came out of nowhere in the Republican primary against bigger and better known opponents . . . and then beat legendary [Democrats] with wide appeal," recalls Bill Richardson, who succeeded the term-limited Johnson in 2002.

But if Johnson harbored dreams of higher office when he left the governor's mansion, he did an awfully good job of hiding them. Unlike Mitt Romney, Newt Gingrich, Mike Huckabee, or any former officeholder looking to keep his name fresh, Johnson didn't write a book, start a PAC, hit the lecture circuit, or become a talking head on Fox News. Instead, he spent most days biking and skiing, taking the odd trip to Nepal for a trek up Mount Everest, to France for a gas-balloon competition, to Maui for a paragliding run, and to the emergency room for the occasional life-threatening injury. ("I haven't paraglided since," he says of his most serious brush with death. "But I'm going to. I'll do it in Salt Lake, where there aren't any trees.")

Johnson's political hibernation was remarkable, however, for another reason: He never sought to reinvent himself ideologically. And he never learned to pander. In many ways, he's the anti-Romney. Consider each man's treatment of Sarah Palin. In July, after aides were quoted ridiculing her, @MittRomney took to Twitter for some 140-character brownnosing: "TIME says unnamed advisors disparaged @SarahPalinUSA. Anonymous numbskulls. She's proven her smarts; they've disproven theirs."

What does Johnson make of Palin? On a drive through the foothills of New Hampshire, I ask him. Riding shotgun, he turns the question around on me. "Um, I guess some people think she's folksy," I say from the backseat. "Well, *at first* she strikes you as folksy," he shoots back. "And then you realize: She might be running for president of the United States! And then, don't we have the obligation to tell her what a terrible idea that is?" Cupping his hands to his mouth, he brays, "Sarah! We love you! Don't run!" He also performs a rendition of the "deer-in-the-headlights" interview she did on "The O'Reilly Factor," about the BP oil spill.

Johnson seems to relish flouting the watch-your-step etiquette most politicians practice religiously. Richardson, for example, spoke politely—even graciously—of his predecessor. "Nobody should underestimate Gary Johnson," he told me. When Johnson talks about Richardson, by contrast, he doesn't hide his disdain: He hones in on the ethics allegations that have plagued the current governor and reels off a lengthy list of his other qualms. After Richardson became governor, Johnson recounts, "he was teaching a course at the university, and he invited me as the guest. So I came, and somebody said, 'What's the biggest difference between you and Richardson?' And I said, 'Well, I think the difference is that I put issues first and politics last. Richardson puts politics first and issues last.' And, actually, that was the truth. Couldn't have been more accurate. And he was sitting there, and I don't think he really liked it."

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Gary Johnson has his doubters, to say the least. "I think Lyndon Johnson has as much chance of winning the Republican nomination in 2012," says veteran political handicapper Stuart Rothenberg. He's right, given Johnson's heresies on virtually all non-economic issues. That said, it's not implausible that Johnson could gain traction (perhaps more than Paul did) in New Hampshire and other libertarian-minded states. He has considerable personal advantages over Paul—eight years of executive experience, greater campaign-trail energy, better communication skills—and today's GOP is dominated by talk of the poor economy and the size of government, providing a far better climate for a strict libertarian than the one that prevailed in 2008. Moreover, assuming the Democratic nomination isn't contested, independents should make up a much larger segment of the Republican electorate this time around in states, like New Hampshire, where they can vote in party primaries. And even voters who don't line up with Johnson on the issues may still be charmed by his freewheeling style.

After trashing Palin on our drive through New Hampshire, Johnson spots a cop car in the rearview mirror. The chauffeur, Johnson adviser Ronald Nielson, pulls the rented Mazda SUV to the side of the road, and the green-clad officer ambles over. "I stopped you because you were going eighty-three in a sixty-five," he says, peppering the driver with questions. As he disappears with Nielson's license and registration, Johnson scolds himself for forgetting his Valentine One radar detector. "You can't seriously speed without a Valentine One," he tells us. "The Valentine would've sniffed him out long before that happened." The officer returns two minutes later, and the roadside ritual ends anticlimactically. "I'm letting you off with a warning," he says. "Don't ask me why."

As we drive off, Johnson breathes a sigh of relief, floating theories about the merciful cop. But the close call sends him into a lighthearted rant on the absurdity of federally mandated speed limits. "Look," he says, "there are times and places where it would be perfectly safe to go one-forty, and there are others where it would be reckless to go fifty-five." Within moments, he's taking aim at stop signs and red lights. "I'm not opposed to the concept," he allows. "But sometimes, you know, it's 5:30 in the morning! There's nobody on the road!" Johnson laughs, turns in his seat, and fixes me with a grin. "That's the first sign you know you're a libertarian," he says. "You see the red light. You stop. You realize that there's not a car in sight. And you put your foot on the gas."

Ben Birnbaum

Ben Birnbaum is a reporter at The Washington Times.

Shootout in the U.K. Corral

When Wall Street colonized English soccer.

Speaking on BBC radio at the end of 2003, as his novel *Absolute Friends* was published in the shadow of the Iraq war, John le Carré compared himself to Victor Klemperer, the German-Jewish scholar and diarist. Klemperer had said that, while surviving in Dresden during the war, he told himself he was waiting for the good Germans to return, and now le Carré told us that he was "waiting for the real Americans to come back."

This is the kind of thing that makes even the novelist's admirers want to tear the nearest copy of *The Spy Who Came in from the Cold* into small shreds: His reputation as a writer is not enhanced by smug and fatuous political reflections. And yet, come to think of it, Liverpool fans have been feeling something similar.

For more than three years, their famous soccer club writhed in agony under the ownership of two American financiers, Tom Hicks and George Gillett. Then John W. Henry of New England Sports Ventures (NESV), which owns the Boston Red Sox, arrived to acquire Liverpool, just before the club was engulfed by financial calamity. He's the latest in a line of transatlantic owners who have bought English soccer clubs, which might seem odd given that Association Football has never managed to plant roots in the United States. Liverpool apart, Manchester United, Aston Villa, and Sunderland are now American-owned, and the largest shareholder in Arsenal is also American.

In both Manchester and Liverpool, the Americans were first welcomed as succoring angels by fans and players, before they turned into devils, interested only in the bottom line and asset-stripping. But Henry is the real American—isn't he?

His arrival was the culmination, for the moment, of a bitter and bruising contest played, not on the field, but in the boardroom and courtroom. In February 2007, Hicks and Gillett bought the club from the family that had owned it for generations. The two have made their money in Texas and New York through the dark arts of junk bonds and leveraged buyouts, and it was clear that they were buying Liverpool for money, not love—not to say buying it with money they didn't have. That's not illegal, or even unusual, but the economics of soccer are, if anything, darker still than those of hot-rod finance.

Having bought with borrowed money, the two then loaded further debt onto the club in addition to its very heavy existing obligations. Its main creditor was the Royal Bank of Scotland (RBS), which actually means me and my fellow long-suffering taxpayers: During the financial crash two years ago, the British government acquired a majority stake in the bank, which had been gravely mismanaged and nearly went bust. One tranche of 237 million pounds in loans was due to be repaid to RBS by Friday, October 15, failing which the club would be put into administration, one step away from bankruptcy.

To heighten the drama, Liverpool has made its worst start to a season in living memory. On that Friday, they were ranked 18 of 20 in the English Premier League, under whose rules a club that goes into administration has nine points deducted on the league table. That could have condemned Liverpool to relegation, a drop to the division below, which is even more financially woeful.

By the spring of this year, Hicks and Gillett wanted out, but they also wanted to make a profit, or not suffer too much of a loss. They appointed a new chairman of Liverpool, Martin Broughton, a self-made businessman who spent most of his career at British American Tobacco (or BAT, which, like BP, prefers to shelter decorously behind initials nowadays) and as chairman of British Airways for ten years. His job at Liverpool was to find a purchaser, and he set about doing so.

But when he struck a deal with Henry, Hicks and Gillett realized that they were going to take a huge loss. They began frantically to search for another buyer who might be prepared to pay more, while seeking desperate expedients to stop the lawful sale. "As every Liverpool fan knows, the most nerve-racking way to win a football match is in a penalty shootout," Broughton said when it was over, and the comparison was apt, since the lead kept swinging back and forth.

Over several acutely tense days, there were alternate hearings at the High Court in London, which found in favor

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of Broughton, RBS, and Henry, and in a court in Texas. It wasn't wholly obvious to me, or to more learned legal folk either, what the Texan jurisdiction in this matter was, but Hicks and Gillett thought they had managed to block the sale.

Then it was back to the High Court, where counsel for RBS didn't mince words: The wrecking action by Hicks and Gillett was "scurrilous, outrageous and inappropriate." Mr. Justice Floyd agreed, and Hicks and Gillett conceded defeat, with ill grace and only for now: They're threatening to sue for billions. All the same, NESV owns Liverpool.

Few soccer clubs have a more glorious history behind them. Alas, "behind" is the operative word. Liverpool may have won 18 English league championships, seven Football Association (FA) Cups, and five European Champions' titles. But the last FA Cup was in 2006, the last European trophy was in 2005, and the last domestic pennant was all of 20 years ago. And this eclipse of the club seems to echo the fate of the city. Once one of the greatest entrepôts in England, Liverpool has been in severe decline for more than half a century.

It has, in any case, a dark side to its history, as its commercial greatness was founded on the slave trade. Liverpool's most famous son, at least before Lennon and McCartney, was William Ewart Gladstone. Born in 1809 in fashionable Rodney Street (the idea of any street in Liverpool today being called fashionable would be far-fetched), he went from Eton to Oxford to Parliament to Downing Street, where he became "the people's William," a prime minister adored by the masses. And yet the family fortune that supported his career originally derived from slavery.

But then there's a bleak side to the story of the football club as well. The last golden age of Liverpool soccer was in the 1980s, with a clutch of pennants and two European Cups. Sad to say, those were also the years of two frightful disasters, at the Heysel Stadium in Brussels for the European Cup final in May 1985 and at Hillsborough in Sheffield, where Liverpool was playing an FA Cup semifinal in April 1989. At Heysel, unruly Liverpool fans broke through a barrier and 39 people were killed, most of them of them supporters of the Italian club Juventus; and at Hillsborough, 96 Liverpool fans were killed in a crush when the crowd got out of control.

ANTHONY RUSSO

Anyway, there is the larger Football Problem. For two decades, English soccer has paralleled or even parodied the great financial boom. The creation of a Premier League, detached from the rest of the domestic leagues but closely linked to Rupert Murdoch's Sky TV, transformed the game financially, with unprecedented new revenue gushing over the big clubs. They thought it would never end, just as those other wise guys at Lehman Brothers did, not to mention RBS.

Within my lifetime, English footballers were paid a weekly maximum wage—that's right, not minimum—of 20 pounds. Now, many of the Premier League players earn, or at least receive, well over 100,000 pounds per week. A high proportion of them come from abroad and so, increasingly, do the owners. Americans apart, Chelsea has been carried to the top of the league by oligarchic rubles from Russia and is now joined there by Manchester City with its Arab oil wealth.

Even those who love the game as a game feel that there is now something gross or monstrous about English soccer. And there was a large dose of hubris in all this. It could be seen even from the outside that without such fairy money, or sometimes even with it, many of the clubs were effectively insolvent. Nemesis has duly arrived, with several clubs teetering on the financial brink or, like Portsmouth, falling over it. As if to make the point with ironical eloquence, some of the teams have as their "shirt sponsors" corporations which themselves went to the brink. You have to smile at Manchester United players with "AIG" emblazoned across their chests, or Newcastle players with "NORTHERN ROCK."

"I don't have 'Sheikh' in front of my name," Henry said as he arrived, suggesting that he won't just be pouring out limitless money. His modest demeanor has impressed people, and he speaks calmly, pointing out that the Red Sox "have gone toe-to-toe with the Yankees, even though they have got a much higher revenue" (well, not *quite* toe-to-toe this season, if he'll forgive the pedantry).

And so, on Sunday, October 17, Liverpool played its first game under new ownership—which just had to be an away fixture against Everton, the other club in the city, and the greatest rival of all. Hicks and Gillett "were about leverage," said Tom Werner, Henry's partner in NESV, before the game, but, "We are about winning." A more superstitious man might have left that unsaid, as they then had to watch Liverpool being beaten 2-0, to fall to one place from the bottom of the table.

If it was any consolation, this sorry inaugural was driven off the sports pages the next day by two other stories: the likely departure of the brilliant but wayward and self-destructive striker Wayne Rooney from Manchester United and gross corruption in the bidding process for the 2018 and 2022 World Cups. Henry and Werner may be the real Americans, but soccer at present is far from the Beautiful Game.

Geoffrey Wheatcroft

Geoffrey Wheatcroft's books include The Strange Death of Tory England and Yo, Blair!

A Separate Peace

How to fix the Middle East—without talks.

It is more than likely that the negotiations between Israel and the Palestinian Authority (PA) will reach a dead end. If not on the issue of settlements then on other matters. It's not in the details, it's in the big picture: Benjamin Netanyahu will not go as far as his predecessor, Ehud Olmert, and the Palestinians have already rejected Olmert's generous deal. So it is probably a good idea to start thinking about Plan B.

To do this, we Israelis must first set our priorities straight: The more urgent goal is not peace; it is partition. That's because the alternative to partition would be the end of Zionism. If the land is not divided into two states, there will be one state with an Arab majority. This is also not in the interest of Palestinians, since this one state is not likely to be a healthy binational democracy. It is more likely to be a country beset by chronic civil war.

But partition without peace now seems difficult from Israel's perspective. It has been tried in Gaza, and Israelis mostly (though not necessarily rightly) remember the move as a failure: The forced evacuation of some 7,000 settlers from their homes in August 2005 went down in the national memory as traumatic, and what Israel received in return was a Hamas takeover and a constant barrage of rockets on its southern towns. So the evacuation of more than ten times that number of settlers from the West Bank—at least 70,000 settlers live in the territory that would become Palestine under any viable partition plan—seems unlikely. Israeli public opinion will not stomach a large-scale, forced evacuation for anything less than a full peace deal.

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Which would seem to mean that there is no alternative to the negotiations.

Yet this view assumes that the Gaza way is the only way. And that is not necessarily the case. A pullout from the West Bank can—indeed must—be very different. Here is how it might look.

The first step would mimic the Gaza disengagement. There is a relatively wide consensus among Israeli supporters of partition—unilateral or by peace accord—that we first need another "evacuation-compensation bill," like the one enacted by Ariel Sharon's administration. Many of the settlers are not fanatical religious ideologues, but people who were encouraged to live in the West Bank because of government subsidies. If this policy is reversed, and the state were instead to offer subsidies and alternative housing in exchange for settlers' homes in the West Bank, many will come back to Israel proper.

The next step would diverge from the Gaza strategy considerably. It has to do with the legal status of the settlers. The whole foundation of settlement rests on a cluster of legal patches, sometimes collectively referred to in Hebrew as *Tzavie Hazika* (probably best translated as the Linkage Ordinances)—a series of orders issued by the military, along with some Knesset legislation, designed to apply Israeli law to Jewish settlers. Rights, political and social, are tied in Israel to residence, not just citizenship. Israelis cannot vote from abroad, and the whole net of social, civil, and often commercial services is dependent on residence within Israel's borders. This originally posed a problem for settlers because they live outside Israel, where the official sovereign is not Israel's parliament but the military. The Linkage Ordinances, however, established that Jews residing in the territories would be treated like residents of Israel. This created a colonial-like situation in the West Bank where, unlike in Israel proper, Jews have rights and services that Arabs do not.

A unilateral pullout would need to do away with the Ordinances. This in itself is not an entirely new idea. It once was discussed inside Sharon's government as a possible Plan B for the Gaza evacuation. Sharon instructed the army that under no circumstances would it shoot at Jewish settlers, not even shoot back. If they picked up arms, he said, the Israel Defense Forces would simply withdraw. In such a case, some of his advisers suggested, the Linkage Ordinances could nevertheless be voided as planned on the day of the scheduled evacuation.

In the end, of course, there was no need for a Plan B, because the settlers complied and left their homes peacefully. But if this time the Ordinances were voided ahead of any evacuation, the picture would change substantially. All services that depend on the Ordinances—commercial water, electricity supply, medical care, telecommunications, public transportation, law enforcement—could be gradually transferred to the military. This would create an intermediate stage before the pullout, which will make clear that the state means business and also give the settlers an idea of what life without the benefit of Israeli residence rights would mean.

Upon withdrawal—and I would argue for a withdrawal from almost all of the West Bank, while retaining the possibility of land swaps and other adjustments during future negotiations—those who wished to stay in the evacuated areas would be allowed to do so. It is a safe guess that very few would. Mostly these would belong to the extreme messianic core, a group distinct from the majority of religious settlers. Such radicals may prefer the land to the state and value geography over citizenship. A partition plan can and should accommodate these preferences and let them choose Palestine over Israel if they so wish. Israel has a large Arab minority, and there is no reason to insist that Palestine be cleansed of Jews entirely.

In practice, however, staying under Palestinian rule is likely to be unsafe, and though we can hope Palestine will become a liberal democracy, accepting of minorities, we can by no means be sure this will happen. So Israel should make clear that it will not tolerate any violence against Jews in the West Bank and would reserve the right to invade Palestinian territory and use whatever means necessary to evacuate those in danger. This is how Israel has behaved in other instances: It not only has a Law of Return, it has also actively evacuated Jewish communities that were at risk and sought shelter in Israel.

If Israel chooses this strategy, its West Bank policies would no longer be held hostage by the whims of a small group of settlers. The very difficult decision to evacuate people from their homes would be transformed from a public to a private one: It would be up to the settlers, each of them individually, to decide whether to return to Israel or stay put.

But policy toward the settlers is not the only way in which this pullout should differ from the case of Gaza. It should also seek to avoid the Gaza results—a Hamas takeover and a barrage of rockets. This time around, the withdrawal should be coordinated with the PA, increasing the odds that power will be transferred in an orderly fashion and that Hamas can be kept at bay in the West Bank. The PA would doubtlessly cooperate, as Hamas poses a greater danger to Fatah than it does to Israel. Moreover, the PA is not the only party with which Israel should coordinate. Absent a full peace deal, any pullout should be backed by an international agreement with third parties. The United Nations, the United States, the European Union, hopefully Russia, and even some of the Arab League members are all relevant. Few countries would object to the ending of the occupation, and some would likely be willing to help shoulder the burden, including security guarantees.

Interestingly, some pragmatists on the Palestinian side have also reached the conclusion that unilateralism is a viable alternative to a peace accord. Palestinian Prime Minster Salam Fayyad has promised to unilaterally declare Palestinian statehood in 2011. Perhaps Fayyad, too, thinks that a two-state condition should first be established de facto: that issues now burdened with huge symbolic weight—dividing Jerusalem, giving up the so-called right of return, and much else—would be treated in a more practical way once the conflict is reduced from a controversy over full and final justice to a border dispute between two sovereign states. And he may well be right. Such a unilateral move by the Palestinians would complement, rather than contradict, a unilateral Israeli withdrawal.

We generally assume that those willing to negotiate are moderate, while those who wish to create facts on the ground unilaterally are warmongers. But in this long, complicated, and festering conflict, the opposite may be true. Because it may well be that peace would be easier after, not before, partition into two states.

GADI TAUB

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End of Innocence

The death penalty's self-defeating foes.

A MOMENT OF high drama interrupted the Supreme Court's summer recess last year. Troy Davis, a Georgia death-row inmate, had filed an emergency appeal in May arguing that he was innocent of the 1989 murder for which the state condemned him—and that new evidence proved it. His lawyers

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asked the justices to override the usual limits on death-penalty appeals and give Davis an opportunity to make his case. On August 17, to the astonishment of Court watchers, the justices granted Davis a stay of execution and a new hearing before a federal district judge. The ruling capped a global campaign on Davis's behalf and implied that the Court shared activists' broader concerns about deadly errors.

The anticlimax came a year later, when Davis's lawyers presented his case to Judge William Moore Jr. Much of the "new" evidence turned out to be recycled from previous litigation. Davis's lawyers failed to call some promised exculpatory witnesses; those who did appear fared badly on cross-examination. On August 24, 2010, Judge Moore released a 174-page opinion in which he called Davis's argument "largely smoke and mirrors." "Davis is not innocent," the judge declared, echoing the conclusions of the trial jury and every other court that had reviewed the case.

Instead of a crushing blow to the death penalty, the Davis case looks a bit like an embarrassment to the death penalty's foes. It eerily resembles the case of Ohioan John Byrd, who got a federal appeals court to give him an emergency stay of execution and a fresh hearing in 2001—only to have his claim of innocence crumble amid revelations that his lawyers had misled the courts and his sister had coached and performed sexual favors for an alibi witness. Byrd was later executed.

Davis's lawyers are fighting Judge Moore's ruling, which is their duty. But the anti-death-penalty movement should learn from it. The clear lesson is that opponents of capital punishment should stop staking their credibility on the overblown notion that death row is thickly populated with innocent men and women.

The movement's emphasis on the risk of a wrongful execution was, at one time, an understandable strategic choice. Public opinion has stubbornly resisted moral arguments against capital punishment, so elected officials have resisted them as well. The Supreme Court foreclosed abolition based on unconstitutional racial discrimination more than two decades ago. In this climate, doubts about the accuracy of verdicts, rooted not only in the undeniable fallibility of criminal justice but also in what were said to be actual cases, seemed like the only way to sway voters or, eventually, the Court.

The fact is, however, that there have been just over 1,200 executions in the United States since 1977, when the "modern" capital-punishment era began, and, though doubts have been raised in many cases, none has yet been proven wrongful. There have been close calls, as a scandal over 13 flawed capital convictions in Illinois showed a decade ago. The Death Penalty Information Center (DPIC) lists 138 prisoners exonerated and released from death row since 1973. But the near-misses can be seen as evidence that the system's fail-safes work. What's more, even that tabulation of near-misses—which would represent less than 2 percent of the over 7,300 death sentences since 1977—is probably an exaggeration.

At least 20 people on the DPIC list were tried and sentenced before the Supreme Court rewrote the rules for capital cases in the mid-'70s, and thus have no bearing on the current system's propensity for error. The remaining 118 include some, like Kirk Bloodsworth, who were no longer facing execution when exonerated. By the time DNA set him free in 1993, Bloodsworth had won a new trial in which, though he was again wrongly convicted of murder, his sentence was set at life in prison.

The DPIC list includes anyone whose conviction and sentence were overturned on appeal, followed by acquittal at retrial, dismissal of the charges, or a pardon based on new evidence. But acquittal is not always equivalent to wrongful accusation. Take Jeremy Sheets, one of the "innocents" on the DPIC list. A Nebraska jury convicted him in 1997 based on a tape-recorded description of the murder by his accomplice, who had committed suicide after confessing. On appeal, Nebraska's supreme court ruled the tape inadmissible since Sheets couldn't cross-examine a deceased witness. The state had no choice but to drop the charges.

Not only has the problem of "actual innocence" in death-penalty cases been overstated, it is probably shrinking—for at least two reasons. The first is the impact of DNA. To date, there have been just 17 DNA-related death-row exonerations. Most involved cases left over from the years before DNA testing was widely available. Now, that backlog has been cleared, and DNA analysis is well established, which increases the reliability of capital trials. The second reason is that the number of death sentences is down. There were only 111 in 2008, down about 66 percent from the 1994 peak of 328. This decline reflects the plummeting murder rate, which has fallen by roughly 50 percent over the last two decades. You can't have capital punishment without capital crimes.

Focusing on wrongful executions puts capital-punishment opponents in an awkward position: It's in their political interest for the system to produce miscarriages of justice. After a 2006 DNA test proved definitively that Roger Coleman was, in fact, guilty of the crime for which he was executed in 1992, *The Washington Post* reported that "[t]he results stunned and disappointed those who have fought a 25-year crusade to prove that Roger K. Coleman was innocent. They also dashed hopes among death penalty foes that the case would catalyze opposition to capital punishment across the country."

Repeatedly mislabeling killers as martyrs can make capital punishment's foes seem more interested in politics than truth. It can make them seem more sympathetic toward convicted murderers than their victims. And, at times, death-row inmates have tried to exonerate themselves by falsely accusing others. Troy Davis pointed the finger at a man named Sylvester "Red" Coles. Roger Coleman's attorneys eventually had to pay to settle a libel lawsuit by an innocent man they had implicated in Coleman's crime.

One of the anti-death-penalty movement's goals is to create a new basis for *habeas corpus* litigation, so that lawyers can plead that new evidence proves the innocence of their clients, without also having to prove an alleged constitutional violation, such as ineffective assistance of counsel. A victory for Troy Davis before Judge Moore would have advanced that cause; his defeat probably set it back. The Supreme Court is bound to look more skeptically at the next urgent claim of innocence to come their way.

Opponents of the death penalty would be better off devoting more time and energy to more significant—but less media-friendly—problems with capital punishment. They should lobby to increase paltry state budgets for capital defense. They should urge state legislatures to narrow the criteria for capital punishment, so that it is restricted only to mass murder and other crimes that clearly qualify as "the worst of the worst," rather than run-of-the-mill liquor store holdups. These are good fights principled death-penalty opponents can and should fight, without staking their credibility on tales told by the likes of Troy Davis, Roger Coleman, and John Byrd.

Charles Lane

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Limited War

How the age of austerity will remake American politics.

THOMAS B. EDSALL

In this election, you can glimpse the brutish future of American politics. This new age of brutishness may or may not include the Tea Party. But, even if the Tea Party dissipates, the anger undergirding it will not. The Tea Party has expertly articulated a widespread grievance: that the government is redistributing money from hardworking Americans to the idle and undeserving. Of course, this is hardly a new charge. But it takes place in a new context—an age of growing austerity, where this complaint will acquire an ever-sharper edge and battles over the scarce resources of the state will erupt in spectacular skirmishes.

Politics has, in some sense, always been a resource war—and in American politics it has usually taken the form of one political party promoting a social safety net and the other party decrying how hard-earned tax dollars unjustly finance those benefits. But, while that debate was intense, it was in some sense resolvable. For decades, our political system has been able to fund an array of social programs while keeping taxes relatively low. The American economy grew at a sufficient pace that it could rather effortlessly bankroll a state that satisfied divergent interests.

But that broad, unintentional compromise is no longer sustainable. We're entering a period of austerity, far different from anything we've ever seen before. The predictions, especially the ones formulated by sober, nonpartisan analysts, are eye-popping. Earlier this year, a Congressional Budget Office report estimated that the debt as a percentage of GDP would approximately triple by 2035. Put another way, debt will come to exceed 185 percent of GDP. That's far worse than Greece's current perilous condition, a crisis that has been portrayed as the *reductio ad absurdum* of fiscal indiscipline.

Like the David Cameron government in Britain, or any

It's the political era of Sharks v. Jets—when the parties attempt to expropriate the other side's resources.

OBAMA: PABLO MARTINEZ MONSIVAIS; PALIN: ROSS D. FRANKLIN, BOTH VIA AP PHOTO

Lou Beach

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number of other states across Europe, we'll soon be forced to reckon with the fact that our economic viability depends on some combination of shrinking the state and raising revenue. If we were careful planners—and, of course, we're not—we would begin by saving about 5 percent of GDP each year. Next year, for example, we'd have to make tax increases and spending cuts add up to about $700 billion. Over time, the total costs would prove immense: raising everyone's tax bill by at least 25 percent (and probably a lot more than that) or eliminating about 20 percent of the federal budget (the approximate current size of Social Security, for example).

Even if you assume that a crisis is distant—or assume that we'll avert it by letting the Bush tax cuts expire and further containing health care costs—the anxieties about deficits are already acute. Both parties are posturing to assume the mantle of fiscal conservatism, a trend that the success of the Tea Party will only exacerbate. And by December, Obama's deficit commission will release its findings, further propelling this debate to the fore.

With resources shrinking, the competition for them will inflame. Each party will find itself in a death struggle to protect the resources that flow to its base—and, since the game will be zero-sum, each will attempt to expropriate the resources that flow to the other side. This resource war will scramble our politics. Each party will be forced to dramatically change its calculus and remake its agenda. And if you thought our politics had grown nasty, you haven't even begun to consider the ugliness of the politics of scarcity.

At first glance, the Democrats have the most to lose in this new struggle. They have spent decades trying to recover their image from the excesses of the McGovern era, repositioning themselves as something more than an aggregation of aggrieved—and needy—interest groups. Even Barack Obama, the most liberal president in decades, packaged himself as post-partisan candidate, rather than as a warrior on behalf of unions or minority groups. "There's nothing liberal about wanting to reduce money in politics," he said during the campaign. "There's nothing liberal about wanting to make sure [our soldiers] are treated properly when they come home." This pitch worked well. The public basically considered him a man of the center—a perception that rested on many years of Democrats shaking off the caricature (and reality) of paleo-liberalism.

But, for all the gains the party has made, the age of scarcity risks reversing them. It's precisely the Democratic Party's historic base—minorities, labor, the poor—that will take the greatest hit in coming years. You can already begin to see signs of this. Even when Congress approved an economic stimulus bill in August, it coupled spending on health care and teachers' salaries with deep cuts in food stamps. It reduced benefits for a family of three by $47 per month, according to one estimate.

Or take state government, which is really the vanguard of the crisis. The austerity hammer has fallen hard on Democratic constituencies. According the Center on Budget and Policy Priorities, at least 31 states have slashed programs that provide low-income children and families access to either health care or health insurance. Peruse almost any state budget and you'll find further shredding of the safety net. Idaho's Department of Health and Welfare has closed nine of its 45 field offices; Georgia has cut funding for low-income family support programs by 7 percent. And that's all merely a prelude to a looming apocalypse. In their next budgets, 24 states will face a shortfall of at least 10 percent—and it's not hard to imagine where they will trim to cover that gap.

Ugly identity politics—and racially-tinged attacks—will accompany austerity.

One of the most obvious targets of cuts will be public-sector workers—the very unions that provide the Democrats with their most significant muscle. Indeed, it's hard to overstate the money and manpower that the public-employee unions provide to the Democrats at election time. Just this election cycle, they have donated $12,561,042 to the Democrats. But these public-sector workers—so easily lampooned as bureaucrats—also happen to be unpopular. Even blue states, like New York and New Jersey, which are largely sympathetic to labor unions, have turned against the public employees in this fiscal crunch, according to the recent findings of pollsters.

So as governments consider firing more of these workers, it places Democrats in an uncomfortable defensive position. Do they stand by this swath of their unpopular base? This drama has already transpired in places like California, which recently saved $1.5 billion by furloughing state employees and scaling back their benefits. The union hardly acceded to these proposals. As the state mulled the massive cuts, one union leader notoriously told Democratic legislators, "We helped to get you into office, and we got a good memory; and, come November, if you don't back our program, we'll help to get you out of office." She may have needed to be that blunt. In California, too, the electorate has no love for public workers. A majority, according to a recent Rasmussen poll of likely voters, view them as a "significant" strain on the state budget—an opinion that Republicans like Arnold Schwarzenegger and Meg Whitman have aggressively channeled.

The Democratic base is already applying massive pressure on its politicians to resist cuts. The labor-funded Campaign for America's Future recruited 50 progressive leaders who signed a statement that urged: "We should be strengthening, not slashing, vital programs like Medicaid, Unemployment Compensation, the Supplemental Nutrition Assistance Program (food stamps) … and other programs and services crucial to struggling lower-income and middle-income people in every corner of our country." Such anxieties over austerity explain why liberals have savaged Obama for creating a deficit commission in the first place. Arianna Huffington has fumed, "Maybe progressives and the middle class need to sort of face up to the fact that the president is not that much into them, that he would rather hang out with Larry Summers, or flirt with Olympia Snowe. … Remember, he set up a deficit commission before he set up a jobs commission."

Unfortunately, defending against these cuts exposes all sorts of political vulnerabilities. This year's elections offer a preview of how Republicans intend to use the vulnerability of these programs to attack Democrats. That is, there's some indication that they will return to the racially tinged backlash politics of the '70s and '80s. Newt Gingrich, who has re-emerged as a particularly active rhetorician for the Tea Party, has supplied a large number of phrases redolent of that era. He has described the Democrats as the "party of food stamps." That's a slightly softer version of the line trumpeted by Glenn Beck that explicitly decries Obama for acting out a "deep-

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seated hatred for white people or the white culture."

It's a miserable predicament for a party. These social programs are the very reason for its existence. Yet, the party's political survival has depended on its speaking in a low voice about them. In an age of austerity, that is no longer possible. Republicans will try to force Democrats to defend these programs—with all the attendant baggage. And if they don't take up the cause fervently enough, their base will force their hand, espousing the unattractive identity politics that Democrats thought they had escaped.

Austerity will produce unlikely political strategies on the other side of the aisle, too. Take the Tea Party's stance on entitlements. Ostensibly, the Tea Party has stoked an anti-government moment—following in the footsteps of conservatives who have spent generations trashing the New Deal. That's what made it so strange to hear Republican candidates like Mississippi's Alan Nunnelee, a favorite to rip that state's first congressional district from a Democratic incumbent, release a pledge promising to never privatize Social Security. Countless other Republicans have thrashed their Democratic opponents for supporting a $500 billion cut in Medicare. Karl Rove's campaign group has accused Pennsylvania Congressman Joe Sestak of voting to "gut" the program. Another conservative front group, 60 Plus, has run ads against Democrats around the country alleging that their votes to cut Medicare "will hurt the quality of our care."

These ads do not grow from any conservative epiphany about the philosophical virtues of government benefits. They stem from a clever bet about how scarcity will reshape generational politics. For many years, the anxieties of seniors redounded to the benefit of Democrats. When Democrats issued jeremiads about the perils of Social Security privatization, older voters responded with fear. Democrats have maintained a double-digit advantage on Social Security for well over a decade. An NBC/*Wall Street Journal* poll in October 2006 found that the public invested greater trust in Democrats on Social Security by 28 points. Remarkably, that gap now stands at four points, a statistical tie.

How did the Republicans eliminate this time-tested disadvantage? They have replaced the Democrats as the great students of entitlement anxiety. Republicans understand that one axis of the resource war will be generational. All of their vows to defend Medicare are coupled with attacks on Obama's health care reform. They implicitly portray Democrats as waging an age war—creating a massive new government program that transfers dollars to the young at the expense of the elderly. Republicans have cleverly stoked the fear that Obama is rewarding all his exuberant, youthful, idealistic supporters by redistributing resources that are badly needed by the old.

But the voters over 65 that Republicans are pursuing are largely a subset of their most important voting bloc: whites. Republicans have staked the entirety of their electoral future on them. And just as they have exploited seniors' anxiety about scarcity, they have done the same with the white population as a whole. In fact, whites may be the most anxious group this political season. (Only 59 percent of whites believe "Americans will always continue to be prosperous and make economic progress"—while 81 percent of blacks and 75 percent of Hispanics continue to profess faith in the future.) This anxiety is the reason that Republicans have spent so much time talking about the menace of immigration—even though many of them once viewed Hispanic voters as a potential pillar of their future coalition.

The rise of illegal immigration as an issue this cycle doesn't correspond to material facts. The number of aliens pouring across the border is not increasing. On the contrary, the recession and improved enforcement have drastically reduced it. What is increasing is anxiety about resource competition. And that's exactly why immigrants cause so much agitation: They are perceived by many voters as one giant, undeserving resource suck. In June, Gallup asked, "Which comes closer to your point of view, illegal immigrants in the long run become productive citizens and pay their fair share of taxes, or illegal immigrants cost taxpayers too much by using government services like public education and medical services?" Among all voters, 62 percent perceived immigrants as a resource drain. Among Republicans, the number concurring with that dim assessment rose to 78 percent. You'll often hear Republican immigration proposals—rewriting the Fourteenth Amendment's guarantee of citizenship, for instance—dismissed as political suicide. I would argue that it shows the GOP's astute understanding of the new zeitgeist.

It goes without saying that Republicans will also be waging a war on behalf of the affluent and corporations. They have been stunningly successful at walking away from recent budget fights in those states granting even further tax cuts to business interests. In California, for instance, they managed to secure a $30 million tax break for Humboldt Redwood Company, owned by one of the state's wealthiest, not to mention most influential, families. And, even as the state increased tuition at public universities by 32 percent—and as state parks are actually running out of toilet paper—Republicans have skillfully managed to avoid a corporate tax hike. In fact, they protected a $1.4 billion corporate tax cut by agreeing to merely postpone it for two years.

All of which is to say that the age of scarcity poses it own risks to Republicans. They are relying on a group in long-term demographic decline (whites) and pursuing policies on behalf of a group that hardly seems deserving of limited resources (the affluent)—and are attempting to woo another group (the elderly) with demagoguery that betrays their core principles about limited government.

But, for all the risks that resource competition poses to the political parties, the risks are much greater to our political system. There's no doubt which groups will prevail—and which will fall—in these wars. We can already see that the politics of scarcity will inflict the greatest wounds on the poor. The political vulnerability of programs serving impoverished minority constituencies is self-evident. The suffering caused by these cuts is a tragic consequence of this new dynamic. We will not have conceived cuts in a spirit of the common good, or with any eye to creating sound policy, but out of a sense of gamesmanship and the mean-spiritedness that is integral to intense competition over a shrinking pie.

Social schisms in this country have always been real. Yet, we've embedded an ideal of solidarity into our state, a sense of moral obligation. Not a European ideal of a safety net, but a very American ideal. There's been a sense of optimism in our politics and our social policy because we've never perceived social success in this country as zero-sum. We're now witnessing the erosion of that belief—an array of anxieties and a creeping distrust that will sap the optimism from our system, perhaps the most crucial quality in making us an exceptional nation. ◆

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McCarthyism

The Machiavelli of the GOP surge.

MICHELLE COTTLE

In 2004, Fabian Núñez, then the Democratic speaker of the California State Assembly, received an odd phone call. It was the assembly's sergeant at arms, reporting that Kevin McCarthy, the Republican minority leader, was sitting at the speaker's dais in an otherwise empty chamber. "Kevin McCarthy looks like he's presiding, but there's nobody in there," the sergeant at arms told Núñez. Despite their political differences, Núñez and McCarthy were friends; both had been elected to the assembly in 2002 and had swiftly risen to the top posts in their respective conferences. McCarthy would later tell Núñez that he had been in Sacramento fund-raising and decided to drop by the Capitol and give the speaker's chair a test drive—just to see what it was going to feel like when he was in the majority.

McCarthy never did get that speaker's job (although not for lack of positive visualization: another time, Núñez came into his office to find McCarthy trying out his desk). But today, the ambitious, hard-charging conservative has a far more powerful position. Elected to Congress in 2006, McCarthy is now chief deputy whip for the House minority, the conference's head recruiter for this election cycle, and the lead author of the party's recently introduced "Pledge to America" agenda. Along with Paul Ryan and Eric Cantor, he just rolled out a book called *Young Guns*, scolding Republicans for abandoning their small-government roots. (The title, also the name of the candidate recruitment and mentorship program dreamed up by McCarthy, is cribbed from a 2007 *Weekly Standard* mash note/cover package on the three lawmakers.) And, if the GOP takes back the House next month, McCarthy is widely expected to become whip—the third-ranking post in the House. He may not be a household name, even in Washington; but, after a mere two terms in Congress, Kevin McCarthy is on the brink of becoming one of the Beltway's most influential players.

Yet the striking thing about McCarthy is just how temperamentally out of step he is with the current tenor of his party. He has a conservative voting record, yes. But he is about as far from a bomb-throwing, anti-establishment, Tea Party–esque ideologue as you can get. Although in the House only four years, the veteran politico has been swimming—smoothly—in elite Republican circles since 1987, when he signed on with Representative Bill Thomas, whose seat McCarthy essentially inherited. At Thomas's knee, McCarthy not only made a boatload of important pals, he learned much about the art and craft of political horse-trading. Liberals may be tempted to comfort themselves with the thought that the coming Republican Congress will swiftly collapse under the weight of its own ideological zealotry and general looniness. But they shouldn't sleep too easy. The man most intimately overseeing the circus will be a Republican Machiavelli: as calculating, shrewd, and unapologetically political as they come.

McCarthy, to his credit (and advantage), does not fit the popular conception of a Machiavelli. There is no ruthless gleam in his eye à la Tom DeLay, no unsavory smirk. Rather, the square-headed, broad-shouldered father of two has an eager, open face and a manner as sunny as his SoCal home. To engage him on the ins and outs of electoral strategy is like asking a seven-year-old to tell you about his first trip to Disney World. His words tumble out, with frequent stops, backtracks, and asides, and he ends many of his sentences in "right?" as if to make sure I'm hanging with him. "We would go through—every Thursday morning we'd look at the different ways—I would have three different ways you look at a district," he says, explaining to me his role as recruiter-in-chief. "You look at potential people to run. I would put over the top of it census data. The reason I put census data over the top is because we're at the end—every ten years you do a census and redistricting happens—but we're at the very last term of that, so what the district looked like when it was drawn eight years ago is not the same as where it is now. We have great movement, right? So there might be opportunities that we normally don't look at."

As McCarthy grows more animated, a few strands of his tidy, prematurely silver mane come loose and dance like little antennae across his forehead. He waves his arms and uses his fingers to draw invisible circles and charts on the oval coffee table in front of us, and you sense he's itching for a whiteboard or some PowerPoint slides. "Then I went and took how members spent their money, because I wanted to see if there was an axis there of how much somebody spends back home and how often they go back home to whether they lose in a wave election. A wave election is twenty seats or more lost. This is going to be a wave election. 2006 was a wave election. So, in doing this analysis, I came up with my own theory. I call it the McCarthy theory . . . " And on he whirls, faster and faster, giddily tossing out numbers on spending patterns and voting patterns and win-loss records and margins of victory. McCarthy spends his flights to and from the West Coast each week poring through *The Almanac of American Politics*, the unofficial bible of political junkies—and it shows. "He's like Michael Barone on this stuff," says fellow Young Gun Paul Ryan, invoking the actual author of the *Almanac*, famous for his encyclopedic command of political minutiae.

McCarthy does not hail from a political family, or a Republican one. A Bakersfield native, he is the offspring of working-class Democrats: his father a fireman and his mother a homemaker. Kevin worked to help pay for his first semester at Bakersfield College by reselling vehicles he would bring back from car auctions in Los Angeles. But then fate intervened. On the second day that the California lottery was in operation, McCarthy bought a ticket that paid out $5,000. Sinking his winnings into the stock market, he quickly turned enough of a profit to leave school and open up a small deli named Kevin O's. ("It turned out to be a lot like Subway before Subway, right? Fresh baked bread. And I had all these different sandwiches—artichoke heart and cream cheese. I just made 'em up!") The business did well, but the experience left McCarthy with a distaste for big government. "Every sandwich I sold,

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the city got more sales tax, the state got more. But they came in and they would want to give me a ticket because I have a sign outside trying to get more business, right?"

Selling the deli and returning to school in 1987, McCarthy applied for an internship in the Washington office of his congressman, Bill Thomas. He was rejected. Undeterred, he volunteered to clip news stories, gratis, in Thomas's Bakersfield office. McCarthy and his boss soon bonded (over, among other things, their love of cars), and McCarthy began his climb toward district director.

When McCarthy started with him, Thomas was an eight-year veteran of the House, and his political machine would dominate his California district for nearly two more decades. In Washington, the veteran congressman—known in near-equal measures as brainy, hardworking, and mean—became a force to be reckoned with, especially during his tenure as chairman of the House Ways and Means Committee. Through Thomas, McCarthy hobnobbed not only with local party players but also with national names like Newt Gingrich and spinmeister Frank Luntz. Such connections and cachet came in handy as McCarthy began dabbling his own toes in the political waters. In 1999, he was elected chairman of the Young Republican National Federation. In 2000, he won a seat on the Kern County Community College District Board. Two years later, he was on his way to the California Assembly.

In Sacramento, McCarthy took off running. One of his early moves was to start holding tutorials with fellow Republicans. "I made flash cards for all the members; then I'd have them over to my apartment at night and we'd watch old videos of the floor," he recalls. "Because if you're in the minority, every advantage is against you, right? So the only advantage you have against the majority is they're too lazy to know their own rules, right? So it's like a game of poker." McCarthy and his colleagues would "wait and wait" for an opportunity to zing the majority on a technical point. "Once you beat them, they were afraid to fight you again," he explains. "And you could then go out and say, 'I've got four aces,' when you have nothing. But they don't know the rules. They don't know if you're right or wrong."

For McCarthy, homework isn't limited to boning up on arcane points of procedure. Far more important is the knowledge of what makes fellow members tick, both politically and personally. "You can never have too many friends" is one of his guiding precepts. And in this regard he is considered a master. "I've never seen anyone before or since who can build personal relationships with members of all stripes and all parties as well and as thoroughly as he does," says California congressman and former state assembly member John Campbell, a Republican who has known McCarthy since their time in Sacramento.

During his first weeks in the assembly, McCarthy moved aggressively to bond with fellow freshmen, traveling to their home districts to learn more about their political situations and priorities. Back in the state capital, he was forever setting up social events for members. Sacramento can be a lonely place with people's families back in the districts, says Tony Strickland, another former GOP assembly colleague. "Kevin would organize fun things—invite members to play pool, go to movies, go get ice cream." Small wonder McCarthy was voted minority leader during his first term.

The California assembly's Democratic speaker once came into his office to find McCarthy trying out his desk.

Nor was McCarthy's outreach limited to his own team. One of his early friendships was with Democratic freshman Fabian Núñez—who, as luck would have it, became speaker in the same leadership elections that made McCarthy head of his conference. "We played basketball on Tuesday mornings together. We'd hang out and do happy hour together," Núñez recalls. "We'd talk about our families. We got to know one another without necessarily getting into politics." McCarthy, says Núñez, "could separate his political views from his friendships."

But that did not mean McCarthy's rampant sociability was devoid of strategic value. "I like to be around people so I ended up being roommates, right? I had a house. I lived with four guys," he recalls of his Sacramento days. "We had one room there where we put a poker table. And at night, after hours, you could come there, right? But it was pretty much just members." Assembly members, state senators, freshmen, veteran legislators—they all came to Kevin's place. And in the course of those evenings, he recalls, "I learned everything that happened in every committee while we're sitting around talking. You can't serve on every committee. But you can know what happened, what the debate was, who said what."

McCarthy's talents went beyond extreme networking; he also understood how the negotiating table worked. "American politics has always been about accommodation and compromise," says Thomas. His protégé, he recalls, grasped very quickly the futility of trying to force people to do what you want. Núñez agrees. "Kevin is smart enough to know that, when dealing with politics, you have your views that are important," he says. "Beyond that, you have to accommodate the other side." Núñez recalls the time that one of his more liberal members was pushing a bill to regulate disposal of electronics components. Republicans hated the bill, as did many Dems, because of opposition to it in Silicon Valley. "I needed forty-one votes to get the bill out, and I was a couple of votes short," says Núñez. So the speaker went to his friend and fellow leader, reminded him of some funding Núñez had recently approved for McCarthy's caucus, and asked him to scare up a few votes among his team to help pass the bill. It was a bad bill from the perspective of Republicans, Núñez recalls. "But he went out and got me three or four votes. That's the kind of guy Kevin was—and still is."

In turn, when McCarthy needed a favor, Núñez was happy to oblige. "Sometimes he would come to me and say, 'Look, a couple of the Republicans here are not being team players. Do whatever you need to do, but I would appreciate it if they didn't have good offices,'" says Núñez. "Then I would take away their offices." But when they'd come to complain, he chuckles, "I would *never* say I was doing it to help Kevin McCarthy."

It is only a slight exaggeration to say that when Thomas decided to retire from the House in 2006, he gift-wrapped his seat for McCarthy. The veteran congressman did not announce his intention to step down until four days before the state's filing deadline for the primary. By that time, McCarthy—who has coyly maintained he had no advance warning of Thomas's plans—had reportedly locked up the endorsements of local officials and the support of key local moneymen. Thomas saw to it that the party's national establishment embraced his anointed successor as well. Starting that March, McCarthy made the Washington fund-raising rounds with Thomas, appearing at big-money

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events alongside Gingrich and then-Majority Leader John Boehner.

McCarthy's campaign chest quickly swelled to over $1 million, little of which he needed for his own cakewalk to the House. Perpetually on the lookout for new friends, he set about sharing the wealth. He distributed tens of thousands of dollars to open-seat Republican candidates as well as $50,000 to the National Republican Congressional Committee. Illinois Congressman Peter Roskam was among those to receive a helping hand. In the midst of his tough race for a Chicago-area seat, recalls Roskam, "I got a phone call from him. He says, 'Hey, I'm coming into town, and I'd love to have breakfast.'" The two men sat down at the Hyatt in Lisle, Illinois, where McCarthy expressed his desire to help Roskam any way he could. "When you're involved in a competitive race," says Roskam, "having people come over the hilltop, so to speak, is incredibly encouraging."

Hopscotching from state to state, McCarthy visited upward of a dozen aspiring House members. By the time he actually arrived in Washington, the friendly freshman had cemented his reputation as an exceedingly helpful guy. His Republican classmates expressed their appreciation by electing him their representative to the Steering Committee—giving McCarthy his first seat at the leadership table.

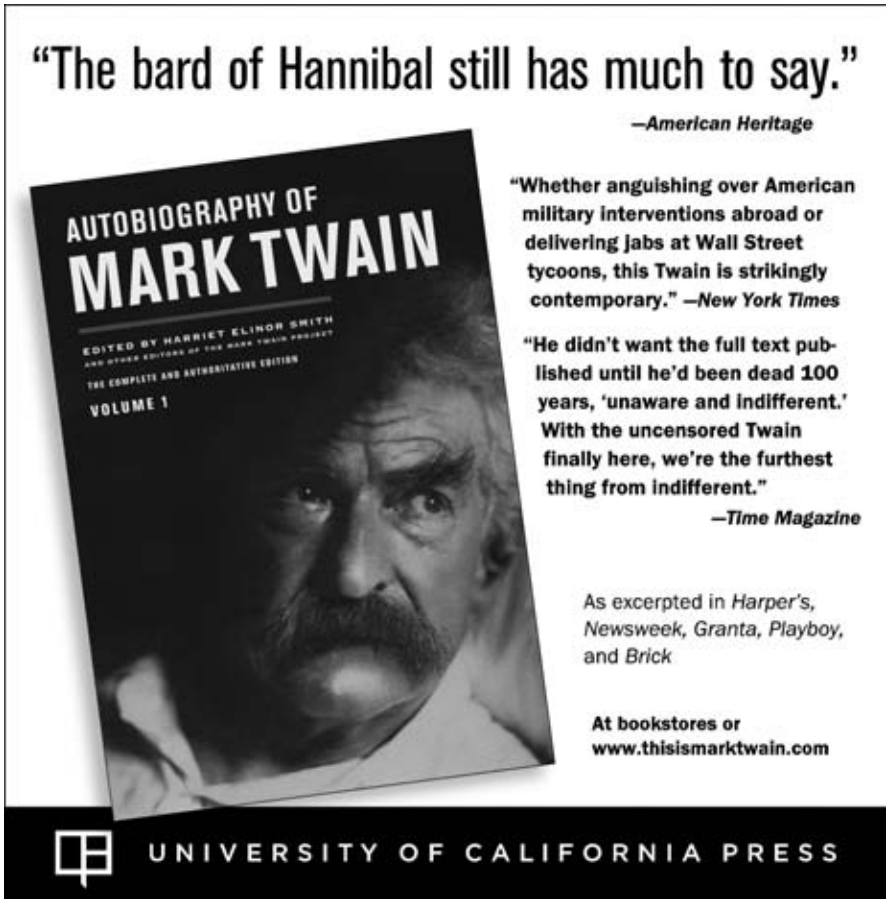
In office, McCarthy continued his charm offensive: He studied up on people's districts, paid courtesy calls to senior members, chatted with often-overlooked Hill staffers. (The pickup basketball games endure.) Teaming up with Ryan and Cantor on the Young Guns project gave him even more opportunities to network with both current and aspiring members, not to mention establish his identity as strategy maven. By the time Cantor went looking for a chief deputy whip following the 2008 elections, McCarthy was the obvious choice.

McCarthy's diplomatic skills come in handy in today's fractured Republican conference. Colleagues say the deputy whip avoids alienating different factions by not aligning himself too closely with any of them. "What we're talking about is the conservative-moderate, RSC versus Tuesday Group kind of tensions," says John Campbell, referring to the coalition of House conservatives known as the Republican Study Committee and the more moderate (and much smaller) Tuesday Group. "I think he is able to navigate those waters by not being affiliated with either one." As Strickland puts it, "Moderates think he's a moderate. Conservatives think he's a conservative." McCarthy's mentor Thomas applauds this kind of strategic neutrality. "It gives you a greater opportunity to accomplish your goals than if you walk around, sandwich board over your shoulder, telling people where you are and what you stand for and that you won't budge," he says.

So impressive is McCarthy's bridge-building that he's said to be the rare member to straddle the trust gap between Minority Leader Boehner and Minority Whip Cantor. Tensions between the two—fueled partly by temperamental differences and partly by the hyper-ambitious Cantor's hot breath on Boehner's neck—are hardly a secret around Capitol Hill. McCarthy has one foot firmly planted in each camp. Coming in, he was seen as Boehner's guy, in part because of the minority leader's ties to Thomas. (During the 2006 leadership race to replace the embattled DeLay as majority leader, Thomas stunned colleagues by nominating Boehner over interim leader Roy Blunt.) Boehner tapped McCarthy to write the 2008 platform, and, earlier this year, put him in charge of drawing up a governing agenda for Republicans to hawk in the midterms, the document that became the "Pledge to America." At the same time, as chief deputy whip, McCarthy now owes arguably even more to Cantor. In some leadership spats, McCarthy publicly sides with Cantor, in others, with Boehner. Asked about the trickiness of being the man in the middle, he laughs and shrugs, "It's not always easy, but it works."

Of course, McCarthy's balancing act could become much tougher if his party does indeed win the House. As Boehner once told me, keeping members focused and unified in opposition is infinitely easier than trying to run the show—and that's not even taking into account the ongoing ideological war within the GOP. Depending on how many Tea Party–fueled revolutionaries carry the day, McCarthy could find himself herding a particularly obstreperous clutter of cats.

Still, I wouldn't bet against him. Whether inviting colleagues for ice cream or having their offices downgraded, the relentlessly upbeat Californian keeps his eyes on the prize. "Very few people have his political instincts," says Tony Strickland, echoing pretty much everyone I spoke with. More often than not, those instincts help Kevin McCarthy get what he wants. ◆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Way Too Big To Fail

Financial reform has a terrifying loophole—and the banks found it.

PETER BOONE AND SIMON JOHNSON

There were many factors that led us to the financial crisis of 2008—dangerous derivatives, irresponsible ratings agencies, negligent regulators—but one was more important than the rest. We now know it as the "too big to fail" problem. What brought the economy to the edge of disaster wasn't only that financial institutions had made rash bets on lousy investments, but that those institutions were so massive that when their bets went bad, they threatened to take the rest of the economy down with them. That's why Washington was forced to come to the rescue with hundreds of billions of dollars in bailouts for the likes of AIG and Citigroup, and why, when Washington turned to the task of making our financial system safer, President Obama vowed, "Never again will the American taxpayer be held hostage by a bank that is too big to fail."

In late 2009, Jamie Dimon, the CEO of JP Morgan Chase, threw his weight behind what seemed like a sound solution to this problem. Congress, he argued in a *Washington Post* op-ed, should create a "resolution authority"—a government-run procedure to wind down a failing bank. The idea was to avoid a repeat of the chaos that erupted during September 2008, when government officials were forced to make the best of two awful choices. They could let a failing institution go under—but this could trigger panic throughout the financial system, as when Lehman Brothers collapsed and was hit with myriad conflicting claims from its creditors. Or, they could inject vast sums of taxpayers' money into companies that were only in dire straits because of their own recklessness. A resolution authority would, in theory, avoid both of these problems. By creating a process to shut down a failed bank, Congress would signal to bankers that they couldn't count on a bailout—deterring dangerous strategies in the first place. And if a bank did fold, the wind-down process under a resolution authority is run by a government agency under clearly specified rules. It's faster and comes with more certainty for all involved—which would prevent another Lehman mess. The Federal Deposit Insurance Corporation already effectively uses such a procedure for banks with insured retail deposits, but Dimon was suggesting that a similar process be applied to any financial institution.

The idea sounded sensible, and it had already attracted backers from across the political spectrum. Treasury Secretary Timothy Geithner supported it; his predecessor, Henry Paulson, remarked that if a resolution authority had been available in the fall of 2008, much of the damage caused by Lehman's collapse could have been averted. When the Dodd-Frank financial-reform bill finally passed in July, it created an expanded resolution authority, just as Geithner, Paulson, and Dimon had recommended.

But there was an escape clause—a rather beautiful one, if you appreciate this sort of elegance. The resolution authority does not cover global financial activities. In fact, it cannot, because no legislature, including the U.S. Congress, can pass a law that determines what will happen in another country's legal system.

This has major implications for the next time that the financial system melts down. And bankers are well aware that there will be a next time—Dimon himself told the Financial Crisis Inquiry Commission that there is a crisis "every five to seven years," which is a completely sensible assessment of how the world's credit system functions. Before the next crisis comes, however, all a bank has to do to escape the resolution authority is to grow so large that it is vital to not just the U.S. economy, but the entire international financial system. If one of these mega-banks goes under, the government will have no choice but to step in and provide full creditor protection. The resolution authority will effectively be meaningless.

When corporate executives want to protect themselves against potential hostile takeovers, they devise "poison pill" defenses—legal instruments that make it harder for outsiders to get board seats or bring pressure to bear on managers. The hole in this resolution authority is the ultimate poison pill under the new regulatory regime. Already, Dimon and other leading bankers are taking steps to make their banks bigger and more intrinsic to the world economy. It's a loophole so brilliant and so dangerous that it should take your breath away.

Jamie Dimon has long harbored ambitions to make JP Morgan a global bank. Since he took charge in 2004, the bank has sought to become the premier financier for governments, enterprises, and households all over the world—a one-stop shop for asset management and commercial and investment banking. Dimon directed top executives to seek out new opportunities abroad and formed an international network of influential advisers, including former British Prime Minister Tony Blair. In five years, JP Morgan's international profits more than tripled. By 2009, they accounted for 62 percent of the firm's total profits.

This June, Dimon returned from a two-week visit to China, India, and Russia, and announced an even more aggressive expansion. Senior executives were ordered to look beyond Western Europe—where most of JP Morgan's foreign investment banking is focused—and seek opportunities in emerging markets. In addition to Brazil, Russia, India, and China—the emerging powerhouses known as the BRIC countries—JP Morgan is looking at Southeast Asian nations, such as Vietnam and Indonesia, the Middle East, and parts of Africa. The bank plans to triple its private banking assets in Asia over the next five years and hopes to make Asia the source of half its non-domestic business. "We are going to get the whole company behind [the international strategy]," Dimon told *The New York Times*.

If Dimon is successful, he will create a bank that is not just too big to fail, but too global to fail. There is no conspiracy here: JP Morgan is simply responding to the available incentives. This international push is terrific corporate strategy and completely legal under our reformed financial system. But it also happens to be very dangerous for the rest of us.

If you raise these concerns with people close to the administration, however, the response is invariably, *Why should*

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we worry about Jamie Dimon? He has proven himself to be an astute risk manager. After all, JP Morgan came through the financial crisis in better shape—both economically and politically—than nearly any other major bank.

The catch is that our financial system is vulnerable to what might be termed the "Chuck Prince problem," after the Citigroup CEO who famously remarked in July 2007, "When the music stops, in terms of liquidity, things will be complicated. But as long as the music is playing, you've got to get up and dance. We're still dancing."

Prince was admitting that if all your competitors are betting big on a particularly risky market or type of investment, it's almost impossible not to do the same, because your investors will judge you against your rivals. One has to be heroically disciplined to primly stand aside while everyone else is gorging themselves—and the CEOs of major financial institutions do not tend to be heroically disciplined.

The dance that caused the 2008 crisis was the subprime mortgage frenzy. The next dance will take place offshore, as big banks seek hefty profits from emerging markets. While the United States and Western Europe are still struggling to escape recession, most emerging markets are already running hot. China continues to grow by at least 8 percent per year, and India and Brazil are not far behind.

The Obama administration needs to understand that all the large U.S. banks (and many other foreign banks) have ambitions to create global giants that America cannot afford to see fail—and yet cannot afford to bail out, either. Citigroup remains as committed to its global ambitions under Vikram Pandit as it was under Prince. Recently, HSBC and Barclays announced that the heads of their aggressive investment-banking subgroups would be promoted as chief executive officers, sending a message that a new expansion is well underway. Bob Diamond, who is soon to be CEO of Barclays, has extolled the virtues of becoming gargantuan. "If you are one of the top five leading [global] players today, you're in a much more powerful strategic position than three years ago," he noted last year. He's right: According to Diamond, in 2006, the top five players accounted for 25 percent of industry revenues. By 2009, they accounted for 40 percent.

And there are signs that as these banks expand, some are pursuing hazardous strategies of the kind that led to the current recession. Even after the financial crisis, Josef Ackermann, the CEO of Deutsche Bank, has pledged to seek 25 percent returns on capital before tax as he builds his bank into a major global player. In a world where safe assets barely earn a few percent, he can only achieve such returns through significant risk-taking. When a few big banks try to squeeze out others through such methods, they force their competitors to follow them. How long can Dimon compete against more reckless rivals without joining in?

Geithner and others have argued that the U.S. resolution authority will make it easier to negotiate an international agreement providing for a cross-border resolution authority—so that if a global bank failed, a global process could be used to insulate the world economy from the fallout. Perhaps, but there is no indication that this will happen anytime in the next 20 years. Our conversations with G-20 deputies confirm this. The G-20 is the relatively new steering committee for the world's economy. Its members account for 90 percent of the world's GDP and two-thirds of its population. The deputies are the senior officials from central banks and ministries of finance who tell their governors and ministers what is and is not feasible. None of these people want to tie their hands in the event of a financial emergency, and none would accept the prospect of an intervention by the United States or anyone else. According to the Basel Committee on Banking Supervision's Cross-Border Bank Resolution Group, which can be presumed authoritative on such matters, "There is no international insolvency framework for financial firms and a limited prospect of one being created in the near future."

Dimon and other leading bankers understand this, which makes international expansion a powerful tool. Not only will it help banks evade the resolution authority, it also ensures that regulation will be weaker. With banks doing more business in multiple countries and markets, we will be forced to rely on the capacity of national regulators around the world to ensure that their operations are in sound shape. This is why international expansion is the real action in banking today—not the small changes around the edges of companies induced by the Dodd-Frank legislation.

Fast forward five to seven years. Suppose JP Morgan is in trouble. Every day brings a grimmer headline about its balance sheet, and the perception quickly spreads that the bank is on the brink of insolvency. All over the world, in different countries and different time zones, large lenders panic, triggering a run on the bank. Hedge funds scramble to pull out their funds and move them elsewhere. JP Morgan is forced to post collateral on its transactions, draining its liquid assets. An emergency meeting is called in Washington, where officials must make a familiar choice: bailout or global meltdown? It's September 2008, or worse, all over again.

There was only one way for us to truly fix the "too big to fail" problem and that was to make the largest banks small enough and simple enough to fail. That way, if a bank made bad decisions, it would be forced to deal with the consequences without endangering everyone else. During the debate over financial reform, Senators Sherrod Brown and Ted Kaufman proposed an amendment to the Dodd-Frank bill that would have taken a major step in this direction. But Treasury opposed this provision, and it died.

Now that we have missed that chance, any bank based in a wealthy economy such as the United States, Germany, or Japan has a strong incentive to become as massive as possible. These nations have taxpayer bases that are sufficiently large and creditworthy to bail out a global bank. And these institutions will be able to access the cheapest funding because their creditors understand that the bank's debt is as good as its sovereign government. No one would dare argue that America's largest banks are so well run that they deserve to be global leaders on merit. Right now, their essential competitive advantage is that they are backed by a government that is unable to ever let their depositors and creditors lose money should the banks flounder.

The next time a huge global bank crashes and burns, causing vast economic damage, you can blame the Chuck Princes of the world if you wish. But the real responsibility will lie with those in the Obama administration who allowed big banks to become behemoths. If the last crisis taught us anything, it was that banks fail and massive banks fail massively. And while some may have the good fortune to be run by a Jamie Dimon for a while, sooner or later they all end up in the hands of a Chuck Prince. ◆

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Stanley Kauffmann on Films

DEVOTIONS

No director has surpassed Margarethe von Trotta in depth of concern for women on the screen. Others, very many, have made all sorts of good films about women, their social situation and history and beings. But von Trotta has an advantage over most of them: she is an exceptionally fine artist. Very few other films about women come close to the von Trotta quality. (Chantal Akerman's *Jeanne Dielman*, for one instance.) But *Sisters, or the Balance of Happiness* and *Marianne and Juliane*, each of which is about a pair of sisters, must rank among the gems of the last century. Further, as if to show that women are integral parts of what is often considered a man's world, *Marianne and Juliane* is the best film I know about the conflict between liberalism and radicalism. Von Trotta's *Rosa Luxemburg* and *Rosenstrasse* prove even further that the term "political art" is not necessarily an oxymoron.

Now, with different daring, von Trotta has gone back into the Middle Ages. The daring becomes increasingly manifest as the film progresses. *Vision* tells the story of Hildegard von Bingen, a German Benedictine nun who was born in the year 1098 and worked through most of the twelfth century. It goes without saying, and thus perhaps should be said first, that the making of the film is superb. The nuns' habits fill the screen much of the time, and their large, white coifs make their faces even more pictorial. The camera work by Axel Block, often seemingly done in candlelight, makes what we see temporally true. Von Trotta's central subject in the film is containment, pro and con: most of the picture takes place within walls. She uses old churches and religious buildings to convey a blend of authority and refuge. Within those walls Hildegard is sometimes content, sometimes not.

It was daring of von Trotta to build a story on issues that, fierce in their day, seem less pertinent now. We can guess it was precisely this seeming lack of immediacy that attracted her. The struggles in *Rosa Luxemburg* would naturally shake us more quickly than Hildegard's insistence on the truth of her divine revelations or on having a separate convent for her and her sisters. (Her band of nuns had been sharing a communal cloister, with nuns and monks having separate living quarters but otherwise commingled.) Here it takes a figurative moment to adjust our private scale of drama to Hildegard's time and environment: to relish her courage in changing cloister procedure, in furthering herbal medicine, in adjusting disciplines, in writing books and songs and plays. As we come to understand, these were the equivalents of more easily recognized modern moments of independence and strength.

Our understanding is quickened by two principal forces: the intensity of von Trotta's admiration for this nun and Barbara Sukowa's performance. Surely it is time for wider recognition of Sukowa's talent. She has been in films for over thirty years, but her appearances have been so infrequent, so unengineered by slick management, that it just happens to have slipped by us that Sukowa is one of the best living actresses. Her radiance in *Berlin Alexanderplatz* and her fire in *Marianne and Juliane* are only two of the memories that prepare us for her Hildegard. Even though the nun doesn't give Sukowa the range that some previous roles have provided, her presence endows Hildegard—and the film—with stature and glow.

Though *Vision* cannot be quite as moving as some of von Trotta's past work, its existence is certainly an occasion for gratitude. At the end, when Hildegard rides forth to preach in the countryside, to reach more people, innovating as she goes, we can, whatever our beliefs, sense heroism.

VISION: FROM THE LIFE OF HILDEGARD VON BINGEN
Zeitgeist Films

SAMSON & DELILAH
Indiepix

A film that is called *Samson & Delilah* has nothing to do with the Book of Judges or Milton. This time those are the names of two teenage Australian aboriginals today, in a desert reserve. Apparently the filmmakers noted that some of these people have wonderfully unexpected names and decided to make use of this fact. The story, too, has not the slightest suggestion of the original. The very absence of such connection is part of the point.

"Film-makers" should almost be singular. The film was written, directed, shot, and scored by one man—Warwick Thornton. He is an Australian who has worked as a cinematographer and has directed shorts and television. This, his first feature, subtly and skillfully made, announces the arrival of a talent—several of them, in one man.

He begins with the waking Samson. (Throughout, there is a good deal of waking and sleeping.) Samson, in his mid-teens and somehow blond, rouses out of his bedclothes to the sound of country-style music, rises in his flimsy little house, and proceeds as usual to do nothing. Oh, there are three or four musicians rehearsing nearby, and Samson

ANTHONY RUSSO

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grabs a guitar and strums for a while; but soon he is chased away. He then spends a good deal of the morning wheeling around this scruffy village in the middle of nowhere in an abandoned old wheelchair—just for kicks.

Delilah, about his age and attractive, wakes in a similar hovel, where she lives with her grandmother. The two soon get to work painting designs on paper and cloth. The first white man we see is a dealer who comes to take some of their finished work, which he will sell for them somewhere—obviously a long-standing arrangement.

Samson and Delilah know each other, though they seemingly never speak to each other. (In fact, these two say less in the course of the film than any central film pair I can remember.) He takes to hanging around, at a little distance. Grandma chuckles and, moderately obscenely, urges Delilah to go off with him and "talk." Delilah sternly declines. Then he tails her to and through a supermarket. No response from her. Next day would seem to be the same, except that at the last moment in the supermarket she tosses a bit of packaged food at him. Through all this mere maneuvering, which—to an outsider—seems to be based in some sort of tribal decorum, we sense a relationship growing.

All of it, it must be emphasized, takes place in golden sun, bathing this bleak environment in long shadows and gorgeous skies that seem to be the source of the textile designs that we see. Soon Delilah accidentally catches a glimpse of Samson—he thinks he is alone—doing a solo erotic dance out in the desert. (Possibly related: he has a habit of getting slightly high by sniffing gasoline fumes.) This heightens her interest. His has already been heightened, we infer, and he must sense that she is interested, that her silence is proper behavior. In what is apparently further proper local style, he announces his intent simply by carrying his mattress over to her and her grandmother's house one day. From here on, he and Delilah do a lot of sleeping together—literally. Just sleeping, not far from each other.

Each of them soon suffers a violent beating from other villagers for different reasons—he because of the guitar, she because of her grandmother—and they steal the community car and flee. This flight, like most of the film, takes place wordlessly. They are clearly now a pair, though they hardly ever speak to or touch each other. They reach a sizable town, and, almost penniless, take shelter under a viaduct, virtually as the guest of a friendly white hobo—played by the director's brother, Scott Thornton—whose chief complaint about them is that they never talk to him.

Their taciturnity reaches further. One day Samson is walking ahead when, in the background, we see two white men jump out of a car, grab Delilah, pull her into it, and drive off. Samson seems to accept her disappearance as an inevitability, and when she returns to the viaduct some time later, her face battered—and surely having been raped—he expresses his feelings by behaving as if nothing had happened. He accepts it, and so does she. The idea of their going to the police is ludicrous—two vagrants under a viaduct. Anyway, the kidnapping and abuse of aboriginal girls is apparently not unusual. (The extraordinary texture of this film is its silent bearing of what is ill as well as what is good.) In time, after subsequent adventures, they return to their community. The last shot—even though it, too, is silent—is comparatively a moment of eloquence.

Thornton's film has two mutually supportive themes. First, obviously, the sociological one, familiar but still abrasive, of the socio-economic situation of the aboriginals. (We can have our own thoughts about the United States and Native Americans.) But Thornton's major theme is change in, yet survival of, tradition. This young pair, though they bear foreign names, seem to be the children of centuries of certain standards of endurance, dignity despite squalor, violence undergone, understandings that need not be spoken. Apparently Thornton has taken what he understands as the aboriginal persona, considerably battered by the present, and used it as the medium for his love story.

The lead performances by Marissa Gibson and Rowan McNamara are more disturbances in our old beliefs about acting. Gibson has done only a bit of previous acting, McNamara none, yet under Thornton's careful hand they give us these two people, genuinely, spontaneously. By now it is a fact of film history that some of the most memorable acting has come from non-actors. These youngsters add to the paradox. One of Thornton's gifts, certainly, is that he has helped these two young people to achieve it. ◆

Jed Perl on Art

THE OPPORTUNIST

LEO AND HIS CIRCLE: THE LIFE OF LEO CASTELLI
By Annie Cohen-Solal
(Alfred A. Knopf, 540 pp., $35)

I.

Annie Cohen-Solal's new biography of Leo Castelli, the art dealer who will forever be associated with the meteoric rise of Jasper Johns and Robert Rauschenberg in the years around 1960, has set me to thinking about the interest that men and women who run galleries inspire among a fairly wide public. It seems that even people with no burning interest in the buying and selling of paintings and sculptures are curious about the lives of art dealers, or so one would be led to assume based on the substantial number of books by and about dealers published over the years. Some of these memoirs—especially the recollections of Paris and New York by Peggy Guggenheim, Julien Levy, and John Bernard Myers—achieve the rollicking charm of picaresque novels, reminding us that formidable tastemakers are often considerable characters, and that artistic or intellectual perspicacity is not all it takes to be an arbiter of the avant-garde. It goes without saying that dealers, even the ones who start out with money, are interested in making money, but their financial operations have nothing whatever to do with the corporate mentality that now dominates our world. Art dealers maintain an antediluvian approach to commerce. They reject the impersonality of the boardroom; they are free agents, the most glamorous of small business owners, do-it-yourselfers in a mass-market world.

Art dealers used to come in two groups: the entrepreneurs, who are the moneymakers, and the evangelists, who are the tastemakers. Now there is a third group: let us call them the opportunists. The entrepreneur is essentially a dealer in luxury goods, selling rarity and pedigree in much the same way as a jeweler or a furrier, except that art is a luxury item with some appeal to transcendence. The ultimate entrepreneur was Joseph Duveen, who in the early twentieth century made his money selling old masters from cash-strapped European aristocrats to people with new

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money, often in the United States. The evangelist is essentially a member of the avant-garde, or—in the years since the collapse of the avant-garde—of a strenuously envisioned counter–avant-garde. The great evangelists were figures such as Daniel-Henry Kahnweiler and Julien Levy, who presented the work of unknown or lesser-known artists, Picasso and Braque in Paris or Gorky and Cornell in New York, and through their support for these artists made an argument about the present and the future of art. The evangelist can be an intellectual on the model of Kahnweiler, who produced two classics in the literature of twentieth-century art, *The Rise of Cubism* and a monograph on Juan Gris. Naturally, every successful dealer incorporates elements of both types. Evangelists want to make money. And entrepreneurs often give an evangelical spin to their money-making, as Duveen did when he hired as a key advisor Bernard Berenson, whose aestheticism was itself an avant-garde vision in the years around 1900.

But who is the opportunist, the most perfect representative of the type? He is Leo Castelli. Although Castelli—who died in 1999 at the age of ninety-one—has been described as both an entrepreneur and an evangelist, the facts do not support either characterization. Many people have testified that money was never for Castelli the primary thing, so he is not exactly an entrepreneur. And the range of stylistically contradictory artists and movements that he supported—Pop, Minimal, Conceptual, Neo-Expressionist—suggests that he lacked the focus of an evangelist, who tends to stand ardently for some particular artistic viewpoint. What really interested Castelli was making a sensation. What he wanted most of all was attention.

It is interesting that the reviews of Cohen-Solal's life of Castelli, many of them written by people who knew Castelli to some degree, almost invariably leave one with the impression that, as Peter Schjeldahl put it in *The New Yorker*, "something impenetrable survives the best efforts of Cohen-Solal." This impenetrability is inherent in the art business, of course: dealers have many reasons for keeping much of what they are thinking to themselves. In the case of Castelli, however, the impenetrability is built into the role of the opportunist that he did so much to define. For the opportunist, the most important thing that is going on is the illusion that things are going on. The opportunist is basically a social animal, a scene-maker, a trend-spotter, an enemy of all fixed or even evolving concepts of value. And that was Leo Castelli. Whatever was happening, he wanted to be there. And if it was no longer happening there, he would go elsewhere. And finally he would go anywhere.

We live in an art world where all that is any longer happening—or at least all that anybody is willing to talk about—is the search for the next happening. The rise of the opportunist mentality, far from defining a certain segment of the art world, has by now transformed the nature of art dealing, of art collecting, and of the art museum. The publication of Cohen-Solal's book is certainly timely, coming only months after it was announced that Jeffrey Deitch, the New York dealer who as a young man was taken under the wing of the aging Castelli, has become the new director of the Museum of Contemporary Art (MOCA) in Los Angeles. Amid general agreement that this move from the world of commerce to the world of the museum was unprecedented, there was debate as to whether it represented a shot of evangelical (or perhaps entrepreneurial) energy into an increasingly moribund contemporary museum scene, or a final collapse of culture into commerce.

Any discussion of Deitch's ascension—and it is certainly symptomatic of where more and more museums are headed—must begin with the fact that he is one of the supreme opportunists. Deitch learned from the master. In a *New Yorker* profile, Calvin Tomkins observed that "like Leo Castelli, whose style he emulates, [Deitch] is a congenital optimist." Deitch had been trying to get a job with Castelli ever since he graduated from Wesleyan in 1974. Eventually, after receiving an MBA at Harvard and returning to New York as a vice president in charge of a new art advisory service at Citibank, Deitch partnered with Castelli on a deal to sell $2 million worth of prints to Japanese investors. After that he started his own business, with Castelli feeding him contacts and advice.

Like many high-flying opportunists, Deitch is nothing if not a canny businessman. Beginning at Citibank, he made a great deal of money for his clients—and did pretty well for himself, too—by deftly coordinating acquisitions and deacquisitions with the inevitable swings in the contemporary art market. What earned him the directorship of MOCA, however, was not his skill as a money-maker but his sure instinct for the sort of spectacles that professional money-makers crave. Deitch Projects, his gallery in SoHo, has always been known for mounting exhibits that were not about the bottom line but about giving a high-end clientele some edgy amusement: "Session the Bowl" was a show about skateboarding; "Nest" was an installation featuring shredded telephone books; "Black Acid Co-op" included a reconstruction of a burned-out home methamphetamine lab. Eli Broad, the Los Angeles real-estate mogul and art collector who engineered Deitch's appointment at MOCA, had more money than he knew what to do with long before he bought anything by Jeff Koons or Damien Hirst. And although Broad could have learned about skateboarding and home methamphetamine labs without Deitch's assistance, it is Deitch the opportunist who knew how to bring it all together—the art and the money and the spectacle—in a way that was to Broad's liking. Whatever is worrisome about the simple fact of an art dealer becoming a museum director pales before the particulars of this case. For Jeffrey Deitch has always been a certain kind of dealer, more involved with art as contemporary spectacle than with art itself. And that is not the kind of person you want to see at the helm of a museum.

Those who say that change is inevitable, and that too much can be made of the distinction between the museum and the gallery, often argue that history is on their side. It is true that both museums and galleries emerged along with the decline of royal and religious patronage in the eighteenth century, and in this regard they are parallel ways in which modern society has sought to make art available to the public. But to define the challenges that now face us in terms of an evolving relationship between culture, represented by the museums, and commerce, represented by the galleries, is to miss the essential role now played by the opportunists, who are far less interested in evolving relationships than in startling juxtapositions.

In Cohen-Solal's biography, Deitch tells of asking Castelli "how he defined his aesthetic vision." Castelli's response: "My aesthetic vision is a fusion of Marcel Duchamp and Piet Mondrian." It is a considered if deeply wrongheaded response, grounded in a line of thinking that goes back to the 1940s and holds that the absolute purity of the most simplified Mondrian and the absolute impurity of the Duchamp "Readymade" somehow amount to the same thing, perhaps under the mistaken notion that all absolutes are equal. What we are really witnessing in such an equivalence is the birth of the opportunist, whose stock-

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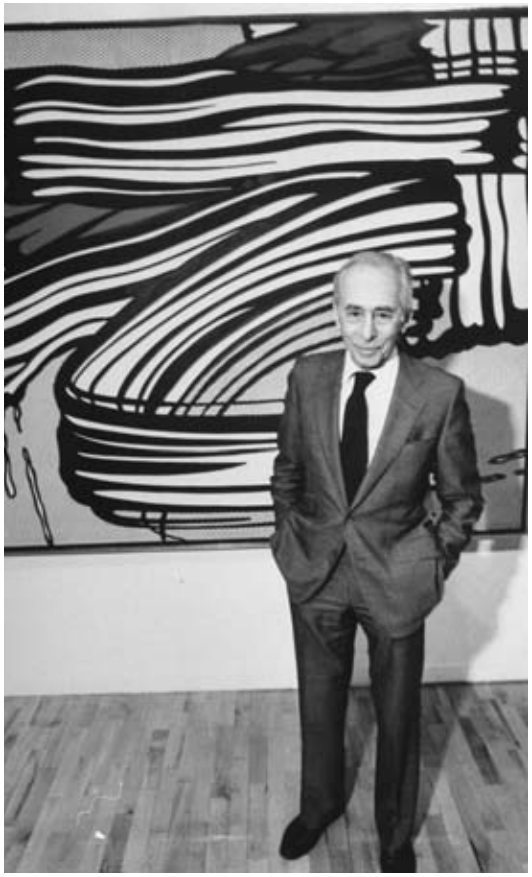
in-trade is improbable if not impossible combinations. Deitch once called the diamond-encrusted skull created by Damien Hirst "a very sophisticated fusion of conceptual art and publicity stunt." He said this admiringly. And it is really another way of saying that the Hirst is a very sophisticated fusion of bogus evangelism and bogus entrepreneurship. (At least one suspects that the entrepreneurship was bogus, given reports that the diamond-encrusted skull was "purchased" from the artist and his London dealer, Jay Jopling, by a consortium that includes Hirst and Jopling.) What we are talking about here is opportunist-think, and it all goes back to Leo Castelli.

II.

The rise of the opportunist has in recent years even spawned a new term for what art dealers do. They are often referred to now as gallerists, a title that does away with both the art and the dealing. It may even suggest that the dealer is a kind of artist. "I am not an art dealer. I am a gallerist," Cohen-Solal quotes Castelli as saying on more than one occasion. But she completely misunderstands the meaning of his statement, referring to the gallerist as "a less glitzy-sounded [sic] métier." Actually, it is pure glitz.

Nobody, in any event, can be surprised by the eagerness with which *Leo and His Circle* has been received. Castelli was the ultimate gallerist, and so it seems to follow that if we can only understand Leo we will understand the history of art in New York. But the man did not make it easy for his biographer. Castelli was not one to bare his soul or offer even a glimpse of his psyche, and his secrets have gone with him to his grave. Mark Stevens, the co-author of a very skillful biography of de Kooning, has observed with perfect accuracy in *Bookforum* that Cohen-Solal "has no inclination … to bring a Balzacian eye to bear on Castelli's public, private, and inner lives." What Stevens leaves unanswered is the larger question. I doubt Castelli's life could be illuminated by Balzac's approach, because even Balzac's most nihilistic protagonists are fired by a sense of good and evil, and Castelli does not appear to have had a moral—or even a determinedly amoral—bone in his body. He was just going with the flow. Occasionally he invented the flow.

Although Cohen-Solal's book is divided into three sections—one for Castelli's European period and two for his American years—stylistically it falls into two parts, the Old World and the New. Castelli was born in 1907 in Trieste, to a wealthy Jewish family. In her first eighty or so pages, Cohen-Solal attempts to discover the secret of Castelli's later success in what amounts to a wild goose chase through Jewish involvement in the European business world since the Renaissance, but her wobbly researches prove tiresome and irrelevant, a desperate attempt to find some biological (or, sad to say, racial) theory as to what made Leo tick. His mother's family was Tuscan, and Cohen-Solal's opening chapter actually begins in the town of Monte San Savino in 1656, with an eyewitness exclaiming that "those people"—the local Jewish merchants—"bristle with ideas," an example of the deep-background concept of biography carried to a truly weird and remarkably unpleasant extreme.



Leo Castelli

Ernesto Krausz—Leo's father: in the 1930s, the family adopted Castelli, Leo's mother's maiden name—was a successful banker. The boy grew up in Trieste and Vienna, read a good deal of first-rate literature in his adolescence, and as a young man began a career in banking, although with little conviction. In 1933 he married very well, to Ileana Schapira, the daughter of a Romanian industrialist who set the young couple up in Paris. Castelli worked for a time at the Banque d'Italie. Leo and Ileana had a daughter, even as they were discovering that whatever else their bond was, it was not sexual. In 1939, as the situation was becoming increasingly untenable in Europe, Castelli made his first foray into the art business, mounting an exhibition of pictures and decorative works by a group of fashionable Surrealists and Neo-Romantics that included Max Ernst, Eugene Berman, Meret Oppenheim, and Leonor Fini.

Castelli began his career on the edge of a volcano. Lucky for him, his father-in-law was a man whose political instincts were as sure as his instinct for business. He had begun transferring assets to the United States as the European cataclysm unfolded. And so in 1941, when the family made its way to New York, Castelli found himself very comfortable indeed, taken care of until eventually, at the rather extraordinary age of fifty, he got around to launching his glorious career. Once Cohen-Solal ships her reticent protagonist to New York, her book is little more than an extended magazine article about a celebrity. The story emerges as a succession of sound bites, fleeting glimpses of the chic protagonist, an anecdote here and a story there, generally gleaned from interviews and hardly integrated into any larger context.

Castelli served in the U.S. Army in Europe, and upon his return to New York spent more than a decade as a well-connected gadabout and helpmate in the downtown New York art scene, certainly not what anybody would regard as a major player. He was a presence at the Artists' Club, although Cohen-Solal may give a somewhat exaggerated sense of his involvement. Castelli did have a hand in the organization of the "Ninth Street Show" in 1951, the large and casually installed group exhibition that brought together the Abstract Expressionists and all their friends and disciples. Castelli was wealthy, a playboy still involved in a marriage that was understood to be open. He and his wife hosted Willem and Elaine de Kooning in their summer place

TIME & LIFE PICTURES/GETTY IMAGES

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in East Hampton in 1953. And Castelli's European connections also began to bear fruit. He represented the estate of Kandinsky in New York for a time, and he organized for the Sidney Janis Gallery a show that juxtaposed contemporary French and American artists.

All of this, however, was nothing but a prelude. Only at the end of the 1950s did this genial sleeping prince wake up, his deepest instincts gradually coming to life as the swaggering sincerity that had animated the Abstract Expressionists since the hard days of the Depression was eclipsed by postwar prosperity and the world-weary skepticism of Duchamp, whose star had been rising, slowly but steadily, since the 1940s. The story of how, in 1957, Leo and Ileana paid a visit to Robert Rauschenberg's studio in a downtown loft building and ended up on another floor in the same building, looking at the work of his then-partner Jasper Johns, has been told a great many times. Cohen-Solal, by her own admission, has nothing to add. Actually, it isn't much of a story. Castelli was bewitched by Johns's paintings of targets and flags, and decided to give Johns a show in the gallery he had recently opened in the Schapira townhouse on the Upper East Side.

Then everything started to happen very fast. A painting by Johns was featured on the cover of *ARTnews*; Alfred Barr reserved four paintings for the Museum of Modern Art; and the young critic Leo Steinberg, taking a turn as a mid-century Apollinaire, hailed Jasper Johns as a radical whose work was as astonishing as—well, as Picasso's. What was not clear was in what sense this astonishment was different from plain old bafflement. In any event, the blandly enigmatic quality of Castelli as a dealer fit perfectly with the blandly enigmatic quality of Johns's "targets" and "flags." If Johns and Rauschenberg were draining all the affect out of art, Castelli was draining all the affect out of dealing. If Rauschenberg said he was operating in the gap between art and life, Castelli was operating in the gap between art and commerce. He was a cipher selling ciphers. The opportunist had been born.

There is something slippery in many of the descriptions of Castelli. Mark Stevens describes him as "short, playful and silky—you'd want to stroke him like a cat." Others have seen a hard-to-pin-down mix of European suavity and American chutzpah, perhaps not unlike the mix in Johns of Southern manners and New York smarts. Calvin Tomkins saw "an engaging blend of European elegance and American enthusiasm," and Schjeldahl writes that Castelli "crowned his Continental glamour with a faintly comic and completely endearing American-style openness." The trick, in other words, was that the real Castelli never seemed to appear. One of the most revealing comments comes from the collector Victor Ganz, an enthusiastic client who apparently had no illusions about the man. In Tomkins's telling, "Ganz, a connoisseur as well as a collector, cannot even recall an instance of Castelli's discussing a work of art in aesthetic terms, although he says that once, not long after he remarked to Castelli that a Johns painting on the wall reminded him of a late Beethoven quartet, he happened to overhear Castelli tell another visitor that Johns's paintings were like late Beethoven quartets."

Was Ganz saying that, so far as Castelli was concerned, any analogy would do? I am reminded of the quietly belligerent arbitrariness of a statement that Johns made for the "Sixteen Americans" show at the Museum of Modern Art in 1959: "Sometimes I see it and then paint it. Other times I paint it and then see it. Both are impure situations, and I prefer neither." Perhaps, so far as Castelli was concerned, whether the painting reminded you of a late Beethoven quartet or not amounted to the same thing—and he, too, had no preference.

III.

Although those who knew Leo Castelli generally report being charmed by him, few confess such warm feelings for the dealers who were his disciples and still reign, including Mary Boone, Jeffrey Deitch, and Larry Gagosian. I did not know Castelli, but I was well acquainted with his various SoHo galleries in the years when he ruled the roost, and they exuded an aggressively promotional spirit that can hardly be topped even by the infinitely larger and sleeker spaces that now dominate Chelsea. In its day, 420 West Broadway, the building where Castelli had a floor and his ex-wife's Sonnabend Gallery had another floor, exuded as much raw power as any Chelsea picture palace does today, and I suspect it is only tricks of memory that have convinced some observers that the SoHo of the 1980s was a kinder, gentler time. Wishing does not make it so.

Cohen-Solal could have said more about Castelli's complicated relationship with his first wife, who would by many estimates remain the woman in his life through his two other marriages and many affairs. After divorcing Castelli, Ileana had a Parisian phase with her second husband, Michael Sonnabend. They opened the Sonnabend Gallery, which became the European flagship for the Pop Art explosion. Later, after moving back to New York, Ileana turned the Sonnabend Gallery into a SoHo space that often made the Castelli Gallery look tame. It was at Sonnabend that Vito Acconci did his masturbation piece, *Seedbed*, and that Jeff Koons became a superstar. There is something truly weird about the symbiosis between Castelli and Ileana, these two well-to-do and cultivated Europeans who maintained an extraordinary professional collaboration and became in time the aging pimp and procuress of the hipper regions of the blue-chip art world.

When Larry Gagosian was starting out, he rented a loft on West Broadway, just across from Castelli's and Sonnabend's places at 420, perhaps hoping, not without reason, that Leo and Ileana would train a telescope on the windows of the tall, good-looking young art dealer from California. Robert Pincus-Witten, a critic and dealer and close student of the New York scene, is quoted by Cohen-Solal as explaining that by 1982 "Leo and Ileana were speaking about this young man, very ambitious, who had a loft on the top floor across the street, a very elegant space with a big Eric Fischl." And Gagosian picks up the story. "Leo legitimized me. He would call me to go have a margarita with him at Tre Merli after work and would tell me all the bad things people said about me—it made him laugh!"

Castelli and Sonnabend saw in Gagosian a man with their kind of sure instincts. But what was the nature of those instincts? Money was a huge factor, naturally. But it wasn't everything. For Castelli, Sonnabend, Gagosian, and their clients, the real point has always been what the money can buy. And what it buys them is not so much art as excitement, controversy, relevance, spectacle. Castelli's and Sonnabend's poker-faced and genial demeanor—which owes more than a little to Duchamp—was just the thing to put over these spectacles, which did not invite explanation for the simple reason that they were utterly meaningless. Years ago, at Castelli's place at 420 West Broadway, there were Bruce Nauman's neon sculptures of men in profile, with their penises flashing erect and then slack and then erect again. Now there is Dan Colen's show at Gagosian's on West 24th Street, where you are confronted with a brick wall erected in the middle of one huge gallery, an inverted skate-

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board half-pipe (don't ask) in another huge gallery, a row of motorcycles that have been knocked over in yet another huge gallery, and large abstract paintings made of chewing gum.

Sophisticated gallerygoers have by and large not been amused. Then again, a spectacle may by its very nature be criticism-proof. In keeping with the worldly-wise charm that Calvin Tomkins has over the years brought to his *New Yorker* chronicles of the doings of Johns, Rauschenberg, Castelli, Deitch, and sundry others, all of this can sound like rather innocent fun. And if the opportunist were a marginal figure in the art world, I could gladly go along with the fun.

The trouble is that the opportunists are now running the show. They combine a fundamentally reckless entrepreneurial spirit with an impersonation of the old evangelical spirit that is in fact little more than a determined search for the next new thing. We cannot just dismiss this as market forces run amok, because we desperately need committed dealers, the kind who over the years have been forces for good. Reading Meryle Secrest's biography of Joseph Duveen, or a new volume of essays that Colnaghi, the London gallery, published to celebrate its 250th anniversary, I am reminded all over again that many of the masterworks in our museums are there because dealers put them into the hands of the right collectors—collectors who were determined to share their treasures with the public. Dealers have always been intimately involved with the revival of interest in underappreciated artists, as well as in building an audience for contemporary artists of all stripes. The finest art dealers have also been sensitive to what was going on in artist-run spaces, among critics, among historians, among curators. Through their individual exhibitions and even more through their ongoing programs of exhibitions, the art dealers have helped to define affinity groups and aspects of the high art traditions that museums and art historians were not quick to see. There are certain artists—Morandi is a prime example—who for years were known in New York mainly through the work of galleries, in Morandi's case beginning with the shows at the World House Galleries in 1957 and 1960.

Some will argue that the conditions in the galleries today are not in any essential way different from the conditions a generation or two ago. And it is true that the gallery world has always been a mixed bag. There has never been a gallery that could satisfy any gallerygoer all the time, and even those who have been dismayed by the spectacles engineered by Dan Colen, Damien Hirst, and Mike Kelley at Gagosian in recent years will point out that Gagosian has also mounted beautiful exhibitions of the sculpture of David Smith, and shows of paintings by Picasso and Monet that are routinely and quite accurately described as "museum quality." This past spring another of the Chelsea behemoths, the Matthew Marks Gallery, mounted the most beautiful show New York has ever seen of the slender, sensuous painted columns of Anne Truitt. Gagosian and Marks are not much of a guide when it comes to contemporary art, but there are certainly many other galleries that have made a specialty of presenting younger and mid-career artists on a regular basis. So there are evangelists and entrepreneurs who still ply their trade.

But there is no question that the opportunists now rule. As I make the rounds of the galleries, I find myself more and more with the sick-making suspicion that even the most principled dealers are hankering for a little of the opportunist's fool's gold. This is not an unnatural desire. The legendary avant-garde dealers of the mid-century years—Levy, Guggenheim, Myers—were not above offering some hijinks to get the public's attention. Neither, for that matter, was Alfred Barr, the founding director of the Museum of Modern Art. But when Jeffrey Deitch, a master of high-priced hijinks, has become the director of a major museum, the marginal gesture has become the status quo, and there is reason for concern.

What the opportunists do not understand is that when it comes to the paradoxical nature of artistic value, it is the work of art that justifies the dollar value, and not the other way around. Opportunists love it when this year's spectacle doubles in value—who wouldn't? But what really holds everybody's interest is not the work of art and its sky-high price, but the artist or the collector or the dealer who is associated with this ever-loftier valuation. The cult of personality has replaced the cult of the work of art, which is perfectly understandable, considering how bewilderingly shallow so much of the work sold by Castelli and now by Gagosian and Deitch turns out to be. When Deitch muses as to why Warhol is "rated so high now," he has this to say to Tomkins: "No other artist has changed the way people make art and think about art more than Warhol." He is talking not about Warhol's paintings but about Warhol the man. Everything is about personalities. The impersonality of art is a thing of the past. In its place we have Castelli, the impersonal personality, the gallerist par excellence. He is his own art work, as inscrutable as a Jasper Johns. And Deitch, who is apparently as inscrutable as Castelli, also appears to be as artful as Castelli, considering that he now finds himself at the helm of MOCA, with its distinguished collection of Abstract Expressionist paintings.

Works of art need to be treated with more delicacy than the opportunists can ever muster. In the never-ending dance between art and money, money must have some fundamental respect for art. Some years ago, Allan Bloom, in an essay titled "Commerce and 'Culture,'" argued that "the notion of 'culture' was formed in response to the rise of commercial society," and there may be no place on earth where that tension is more explicit than in an art gallery. In Bloom's dark view of the modern situation, the arts lost their central place in experience as a result of the rise of science and liberal society, so that the very idea of culture implied a marginalization of the arts. "Men and women," he lamented, "die for their country, for their gods, and perhaps even for the truth, but not for culture." Bloom did not seem to believe that art, having relinquished its role as the expression of religious or political values, could achieve the kind of private intensity that was in fact inaugurated by the paintings of Watteau and Chardin.

If there has always been a dark—and even tragic—dimension to the situation of the arts in the modern world, it is that artists freed themselves from the church and the state only to find that they were now beholden to commercial culture. Perhaps the most important thing that an art dealer can do is demonstrate that art's material dimension and art's moral dimension are not entirely unrelated. This may not be something that art dealers generally set out to do, but it is a corollary of their profession, at least when it is carried out honorably and at the highest levels. In a memorable show in a commercial gallery, transcendent objects are for sale. If the conditions are right, and culture and commerce meet, some sort of détente is achieved. That spirit of détente is now dying in Chelsea. Leo Castelli has a lot to answer for. He set culture and commerce on a collision course half a century ago, and the wreckage is still piling up a decade after his death, with no end in sight. ◆

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Zoë Heller

THE MISERABILIST

STORYTELLER: THE AUTHORIZED BIOGRAPHY OF ROALD DAHL
By Donald Sturrock
(Simon & Schuster, 655 pp., $30)

Roald Dahl, the beloved laureate of modern children's fiction, who often boasted of his uncanny access to the seven-year-old mind, who preeningly referred to himself in old age as a "geriatric child," did not actually get around to following his agent's advice and writing a children's book until he was well into his forties. Even then he did so grudgingly, and only because his short stories for adults were not selling. Prior to the publication of *James and the Giant Peach* in 1961, he seems to have regarded the idea of writing for children as something of a joke. "Parenthood is a great strain," he wrote to a friend shortly before the birth of his first child in 1954. "I can see it all. Nursery books for Knopf. Once upon a time there was a dear little bunny."

Dahl was never a dear little bunny man. He plighted his troth to a peculiarly sour view of the world very early on in his youth. As a teenager, he wrote an angry little poem for a school competition, on the subject "the evening sky." ("Evening clouds, like frog spawn, spoil the sky.") When one of Dahl's classmates, who had written a romantic, rhyming paean to the beauty of dusk, was moved to question the grimness of his poetic tone, Dahl witheringly informed the other boy that "life isn't beautiful and sentimental and clear. It's full of foul things and horrid people, and incidentally, rhyming is old hat."

This schoolboy brand of misanthropy never lost its appeal for Dahl. Throughout his adulthood, he continued to hoard evidence of life's foulness and to pore, with connoisseurial relish, over what was horrid:

> Things I Hate:
> All piddling spindly tables, specially
> the kind that slide into each other—
> six of them.
> Women who say "What are you
> thinking?"
> Bookshelves with an unread look.
> Men who wear rings that are not
> absolutely plain.
> The larger the ring the worse it is.
> A diamond worst of all.
> Men who wear bow ties, pointed shoes,
> shoes in two different leathers,
> tie clips, sock suspenders.
> Men who have four or five strands of
> hair and they let it grow long and
> paste it to their domes.
> Men or women who hold a cigarette
> between thumb and first finger.

Dahl composed this list when he was thirty-four years old. A fuller, though by no means exhaustive, inventory of his adult animosities would have included fat people, ugly people, Jews, "half-successful painters with long side-burns," men with beards, "intellectual writers," "bad musicians," "queer foreign office types," and almost everyone who ever published or represented his writing over the years.

Biographers too, apparently. According to Donald Sturrock, the author of this huge new chronicle of Dahl's life, Dahl regarded biographers as "dreary fact-collectors" who produced dull "assemblage[s] of detail" and who failed to appreciate that invention was "always more interesting than reality." Intriguing as these remarks are, Sturrock's decision to quote them at the very start of his book seems a little foolhardy, for he is not, as it turns out, particularly well-equipped to confound Dahl's prejudices. He suffers from an ungainly prose style and a very limited ability to write interestingly about writing. He evinces an excessively wide-eyed regard for Dahl's "genius." (There was, he claims, "something of Charles Darwin in Roald.") And he has a maddening habit of serving up clichés with the meditative air of a man minting startling aperçus. Jeremy Treglown's unauthorized biography of Dahl, which appeared in 1994, is in many ways a superior work to this: better written, brisker, and infinitely more perceptive about Dahl's fiction.

That Sturrock has managed, in spite of his handicaps, to produce an interesting and even memorable book is owing partly to the privileges of his authorized status. He was hand-picked by the Dahl family to write this biography, and he benefited from access to thousands of previously unseen letters and drafts. Mostly, though, the book is saved by the magnificent, and frequently malign, force of its subject's personality.

Dahl was born in Wales, in 1916, to rich Norwegian émigrés. He was, at various times in his life, an oil executive, an RAF fighter pilot, a Washington-based spy for the British, an art collector, an antiques dealer, a gambler, and a greyhound racer. (He once seriously considered chucking in writing and starting over as a bookie.) He had a vast and starry circle of trans-Atlantic acquaintances (Franklin and Eleanor Roosevelt, Hoagy Carmichael, Ernest Hemingway, Francis Bacon, Noël Coward, C. S. Forester, Spencer Tracy) and a no-less-starry record of sexual conquests (Martha Gellhorn, Clare Booth Luce, Gloria Vanderbilt, Ginger Rogers, Elizabeth Arden, as well as, according to one American witness of his wartime adventures, "everybody on the east and west coasts that had more than fifty thousand dollars a year").

For all its frolicsome and glamorous interludes, Dahl's life was characterized by an inordinate degree of catastrophe and misfortune. His older sister and his father died in quick succession when he was three years old. At the age of nine, he had to have his nose sewn back onto his face after it was torn off in a car accident. The injuries that he sustained in a near-fatal crash on his first day of flying with the RAF left him in pain for the rest of his life. His infant son, Theo, was brain-injured after a New York taxicab crashed into his pram. His daughter, Olivia, died of complications from measles when she was seven. And at the age of thirty-nine, his wife, the Hollywood actress Patricia Neal, suffered a series of disastrous strokes while pregnant with their fourth child.

This biblical catalogue of suffering goes some way to mitigating Dahl's miserabilist view of things, although it never quite explains the fantastic nastiness of his behavior toward his family, colleagues, and friends. Dahl had reserves of charm, and he was capable of enormous generosity. But he was also a champion grudge-holder, fight-picker, and tantrum-thrower. "Success did not mellow my husband," Patricia Neal once noted. "Quite the contrary, it only enforced his conviction that although life was a two-lane street, he had the right of way."

At dinner parties, Dahl's potent gifts of vituperation regularly sent fellow guests home early. He was once thrown out of a London gambling club for complaining at the top of his voice about the disgust-

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ing Jews who were spoiling the place. When his seventeen-year-old daughter Tessa accused him, accurately, of having an affair with Felicity Crosland, the family friend for whom he would later leave Neal, he berated her for being "a nosy little bitch." He was forever bashing out bitter letters to his publishers and his agents, complaining about perceived slights to his authorial dignity. When he finally threatened to leave Knopf, his editor Robert Gottlieb was only too happy to show him the door. "Let me reverse your threat," he wrote to Dahl. "Unless you start acting civilly to us, there is no possibility of our agreeing to publish you. Nor will I—or any of us—answer any future letter that we consider to be as rude as those we've been receiving."

In Britain, the discovery that the country's "best-loved children's writer" was a bit of a shit has been received with the sort of awe reserved for the most breathtaking of paradoxes. In truth, though, the news of Dahl's personal unpleasantness is not at all at odds with the character of his fiction. With the exception of some of his earliest stories, which strike a glumly mystical note, all of his work—the dark adult fables and the children's books—evince a strong streak of misanthropy and aggression.

The stories for adults tend to focus on perverse forms of human vengeance and cruelty. At their best, they have a sinister sort of élan. More often they evince an oddly naïve idea of "sophistication," an adolescent confusion of amorality with worldliness. Early on in his career, several of Dahl's stories were published in *The New Yorker*, but increasingly they were to find their first home in *Playboy*. In "The Way Up to Heaven," a wife leaves her doddering old husband trapped in the elevator of their townhouse while she goes off to Europe for six weeks. She returns home to find "a faint and curious odor in the air that she had never smelled before." In "Lamb to the Slaughter," a wife kills her husband, a detective, by bashing him with a frozen leg of lamb; when his colleagues come to investigate his murder, she roasts her weapon and feeds it to them. In "My Lady Love, My Dove," a married couple conspire to bug their houseguest's bedroom. "I'm a nasty person," the wife tells her husband. "And so are you—in a secret sort of way. That's why we get along together."

Several of the plots turn on acts of grotesque sexual humiliation. In "Nunc Dimittis," a rich old man punishes a gossipy female friend by displaying a naked portrait of her to their mutual friends. In "Bitch," a man is compelled to make love to a hideous woman by a perfume with prodigious aphrodisiac powers: "Never had I seen a female so tall and broad and thick as this one. Nor so thoroughly repugnant.... I was able to take most of it in—the metallic silver-blue hair with every strand glued into place, the brown pig-eyes, the long sharp nose sniffing for trouble, the curled lips, the prognathous jaw, the powder, the mascara, the scarlet lipstick and, most shattering of all, the massive shored-up bosom that projected like a balcony in front of her."

Dahl's repeated depiction of sex as a foul, vengeful act and his obsessive disgust with human bodies—with sagging cheeks and bow legs and wet salmon mouths—are, to say the least, dispiriting. The later stories, in which the sexual sadism is at its crudest and the "wit" at its most vestigial, are almost unbearable to read. One of the last short stories Dahl ever wrote, "The Last Act," describes in obscene detail the rape of a menopausal woman by a gynecologist. Dahl cheerfully referred to it as an attempt to describe "murder by fucking."

Writers of adult fiction rarely enter willingly into the ghetto of children's fiction. (When Martin Amis was asked if he would ever consider writing a children's book, he allowed that he might, if he were to find himself severely brain-damaged.) For Dahl, however, the dreaded Kiddy Korner proved to be his liberation. The miracle of his children's work was not that it banished his nastiness, but that it transmuted the nastiness into something vigorous and even joyful. The misanthropy that fatally limited his capacities as a writer of adult fiction brought energy and subversive humor to the children's books.

Dahl has had such a pervasive influence on children's literature over the last fifty years—farts and burps and rudeness are common fare in children's books these days—that it is hard to appreciate quite how odd and dangerous his style seemed back in the early 1960s. It took him almost seven years to find a British publisher for *James and the Giant Peach* and *Charlie and the Chocolate Factory*. When they were published, librarians attacked them for their "lack of taste." The children's science fiction writer Ursula K. Le Guin went so far as to claim that *Charlie and the Chocolate Factory* had exerted a malign influence on her daughter's personality.

The children's books, it is true, feature a good deal of gleeful vulgarity and cartoonish violence. Children get squeezed and squashed and turned into mice. Wicked old aunts get mown down by outsize fruit, and malevolent grannies are poisoned. The villains are grotesques, and even the benign adult protagonists—Wonka, Mr. Fox, the centipede in *James and the Giant Peach*—are not altogether safe or "nice;" they are mercurial, mendacious figures, sarcastic and brusque and ever so slightly cruel.

Yet the foulness that pollutes the adult stories is contained, and contested, in the children's books. The avid descriptions of what is vile are tempered by an unembarrassed sense of what is beautiful and wondrous. Writing about the joy of chocolate, or a boy's flight on the back of a swan, or the experience of crawling through a peach, Dahl comes as close to the sublime as any children's writer has. "The tunnel was damp and murky, and all around him there was the curious bittersweet smell of fresh peach. The floor was soggy under his knees, the walls were wet and sticky, and peach juice was dripping from the ceiling. James opened his mouth and caught some of it on his tongue. It tasted delicious."

"I do not believe," Dahl wrote toward the end of his life, "that any writer of adult books, however successful or celebrated he may be, has ever gotten one-half the pleasure I have got from my children's books." One hopes, for the miserable old man's sake, that this was really so. ◆

Seen by a Ghost

If he had seen her
seen her mortal form tonight
open the fridge door wide
almost bundle her body into it
into that nave of brightness
dumbly drinking milk
as spirits drink blood
ghostlike even to herself
athirst for white and dazzled by
the glare of steel and iron
her fingers burnt by ice

he would have said it wasn't her. Not
the one whom dying I left
so she could live on in my place.

ANTONELLA ANEDDA

—Translated by Jamie McKendrick

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Thomas Nagel
THE FACTS FETISH

THE MORAL LANDSCAPE: HOW SCIENCE CAN DETERMINE HUMAN VALUES
By Sam Harris
(Free Press, 291 pp., $26.99)

Sam Harris's first two books, *The End of Faith: Religion, Terror, and the Future of Reason* and *Letter to a Christian Nation*, attacked religious faith. His new book, interestingly enough, attacks not faith but a form of skepticism—moral skepticism. Harris's aim is to show that there is moral truth, and that it does not depend on the word of God. He says that the discovery of moral truth depends on science, but this turns out to be misleading, because he includes under "science" all empirical knowledge of what the world is like. Harris's concrete moral conclusions depend almost entirely on one venerable moral premise and a number of commonsense observations about human life, though they are accompanied by ritual reminders that everything about human experience and behavior depends on our brains.

Harris's book also presents some experimental data about the brain. Those data are largely irrelevant to determining the answer to substantive questions of right and wrong, but they do provide the setting for Harris's important additional claim that the fact that moral judgments are produced by the brain, and that the brain was produced by evolution, does not undermine the existence of moral truth, as some psychologists apparently believe. This is an interesting issue, but first let me discuss Harris's outlook on more familiar topics.

Here is Harris's description of the debate that he proposes to join:

> People who draw their worldview from religion generally believe that moral truth exists, but only because God has woven it into the very fabric of reality; while those who lack such faith tend to think that notions of "good" and "evil" must be the products of evolutionary pressure and cultural invention. On the first account, to speak of "moral truth" is, of necessity, to invoke God; on the second, it is merely to give voice to one's apish urges, cultural biases, and philosophical confusion. My purpose is to persuade you that both sides in this debate are wrong.

While there is a good deal of Harris's familiar religion-bashing in the book, his main target is secular skepticism. The statements about what people "generally believe" or "tend to think" apparently reflect Harris's personal impressions, since he does not cite statistical evidence. The first generalization seems to me dubious. Most theologians do not think that cruelty is wrong because God made it so—though perhaps theologians are not representative of religious opinion. As for those without religious faith, it would be depressing if Harris were right, but perhaps he is: these skeptical views are not unusual, and they never seem to lose their appeal.

In both cases one should keep in mind the distinction between what people say and what they believe. Most people, religious or not, have many confident and straightforward moral convictions, but when they are asked what makes those beliefs true they flounder, grasp at straws, or give up the claim to truth. The same thing happens if they are asked what makes their arithmetical beliefs true. These are second-order questions, philosophical questions, which may provoke a confused answer but do not necessarily reveal what people really think. We know what moral truth is until we are asked to say what it is—as Augustine said about time, and Justice Stewart said about pornography.

In the case of moral beliefs, however, philosophically induced skepticism can sap people's confidence:

> Secular liberals . . . tend to imagine that no objective answers to moral questions exist. While John Stuart Mill might conform to *our* cultural ideal of goodness better than Osama bin Laden does, most secularists suspect that Mill's ideas about right and wrong reach no closer to the Truth. Multiculturalism, moral relativism, political correctness, tolerance even of *intolerance*—these are the familiar consequences of separating facts and values on the left.

Even if this is an exaggeration, Harris has identified a real problem, rooted in the idea that facts are objective and values are subjective.

Harris rejects this facile opposition in the only way it can be rejected—by pointing to evaluative truths so obvious that they need no defense. For example, a world in which everyone was maximally miserable would be worse than a world in which everyone was happy, and it would be wrong to try to move us toward the first world and away from the second. This is not true by definition, but it is obvious, just as it is obvious that elephants are larger than mice. If someone denied the truth of either of those propositions, we would have no reason to take him seriously.

These cases show that the idea of truth applies to values as much as it does to facts—but as with facts, the idea is not limited to obvious cases. There are many questions of value whose answer is not obvious, and about which people disagree, but that does not mean that they do not have a correct answer. As Harris points out, exactly the same can be said of historical and scientific questions: one should not confuse truth with what is known, or agreed on by everyone. But the process of justification has to start somewhere, and if someone purports to doubt the truth of what is perfectly obvious, without offering any credible grounds for denying it, we may be unable to persuade him but we are entitled to disregard him, whether the subject is facts or values. As Harris says, "It is essential to see that the demand for *radical* justification leveled by the moral skeptic could not be met by any branch of science." If someone refuses to acknowledge the probative force of logic, or of experimental evidence, we do not regard it as a threat to scientific truth, and we should react no differently to the dispositions of a psychopath who loves to make people suffer, or a suicide bomber with misguided ideas about salvation and the afterlife. (Harris does not discuss the more radical form of skepticism that denies the existence of objective truth in every domain, including science. But that is reasonable, since the moral skepticism that is his target is much more common, and since it depends on a contrast between facts and values.)

Harris's research specialty is the correlation between brain activity and belief, and he adduces the fact that judging a statement true or judging it false is associated with increased blood circulation in the same parts of the brain whether it is a factual judgment or a value judgment. But this does not really add to the case

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for moral truth, which, as he recognizes, has to come from within morality, as the case for scientific truth has to come from within science, and the case for mathematical truth from within mathematics. The true culprit behind contemporary professions of moral skepticism is the confused belief that the ground of moral truth must be found in something other than moral values. One can pose this type of question about any kind of truth. What makes it true that 2 + 2 = 4? What makes it true that hens lay eggs? Some things are just true; nothing *else* makes them true. Moral skepticism is caused by the currently fashionable but unargued assumption that only certain kinds of things, such as physical facts, can be "just true" and that value judgments such as "happiness is better than misery" are not among them. And that assumption in turn leads to the conclusion that a value judgment could be true only if it were made true by something like a physical fact. That, of course, is nonsense.

Occasionally it can sound as though Harris is denying the distinction between facts and values altogether, as when he says that "questions about values—about meaning, morality, and life's larger purpose—are really questions about the well-being of conscious creatures. Values, therefore, translate into facts that can be scientifically understood." But in his more careful formulations it is clear that he is committed to the truth of an irreducible value judgment that specifies which facts determine the difference between good and bad, right and wrong:

> Let us begin with the fact of consciousness: I think we can know, through reason alone, that consciousness is the only intelligible domain of value. What is the alternative? . . . Now that we have consciousness on the table, my further claim is that the concept of "well-being" captures all that we can intelligibly value. And "morality"—whatever people's associations with this term happen to be—*really* relates to the intentions and behaviors that affect the well-being of conscious creatures.

Harris is a utilitarian, in the style of Mill. The structure of utilitarianism as a moral view suits it to someone who wishes to emphasize the role of scientific knowledge in settling moral questions, for it depends only on one simple evaluative premise, namely that we should do what will promote the welfare of conscious creatures and should not do what will diminish it. That leaves the detailed work of determining what we should and should not do to the discovery of what actions and institutions will in fact promote or diminish their well-being, what will make them happy and what will make them suffer. These are factual questions, and sometimes science can help us to answer them:

> Once we see that a concern for well-being (defined as deeply and as inclusively as possible) is the only intelligible basis for morality and values, we will see that there *must* be a science of morality, whether or not we ever succeed in developing it: because the well-being of conscious creatures depends upon how the universe is, altogether.

Harris is aware that there are extensive disputes about whether the single utilitarian premise is sufficient to account for the full complexity of morality, and he mentions examples such as whether the requirement to maximize everyone's aggregate well-being is compatible with the permission to favor ourselves and our families, or with the prohibition against harming one innocent person to produce a greater benefit to others. But he passes over such problems, saying that these are difficult questions, that we have to take natural human motives into account, that there may be multiple equally valid norms of conduct any of which would serve human well-being equally well, and that the important thing is to contrast them with the many forms of life that would make people miserable. (That is what he means by the moral landscape.)

Since Harris skips over the hard substantive questions of right and wrong that occupy moral philosophers, the book is too crude to be of interest as a contribution to moral theory. Bentham, Mill, Sidgwick, Singer, and others have explored the consequences of utilitarianism in depth, but Harris believes his intended audience would be bored by too much philosophical detail, and he may be right. He likewise gives no serious consideration to alternative moral ideas. He offers a brief dismissal of Rawls's defense of justice as an independent value, describing it as requiring us to "conceive of justice as being *fully* separable from human well-being." This is completely clueless: Harris confuses the proposition that a just system need not maximize aggregate welfare with the proposition that a just system may be detrimental to the welfare of everyone.

In general, secular rivals to utilitarianism agree that right and wrong are rooted in values found in the lives of sentient beings, but they hold that when more than one such being is involved and interests conflict, as is always the case with moral issues, there may be other ways of taking into account the multiple values present than by simple cost-benefit maximization of the total. More happiness is always good, and more suffering is always bad, but the reduction of arbitrary inequality between persons and the protection of individual liberty may also be important, in ways that cannot be fully explained by their contribution to the maximization of total aggregate welfare. These debates lie outside Harris's interest, and competence.

There is one issue to which he might have given more attention, if his ambition is to look for moral standards that will work effectively, in light of the facts of human psychology. That is the issue of the relation between promoting the welfare of everyone and promoting one's own welfare. Only the rarest of saints can completely subordinate the powerful motive of self-interest to an impartial concern for the interests of all. There is a real question of what it is reasonable to demand of people in the name of morality, and whether some limits are imposed by the facts of human psychology. Harris seems to believe that other-regarding requirements and self-regarding motivation can eventually converge:

> What we can do is try, within practical limits, to follow a path that seems likely to maximize both our own well-being and the well-being of others. This is what it means to live wisely and ethically. As we will see, we have already begun to discover which regions of the brain allow us to do this.

But the reference to the brain is merely decorative. Harris's hopes are familiar:

> If we are not able to perfectly reconcile the tension between personal and collective well-being, there is still no reason to think that they are generally in opposition. Most boats will surely rise with the same tide. It is not at all difficult to envision the global changes that would improve life for everyone: We would all be better off in a world where we devoted fewer of our resources to preparing to kill one another. Finding clean sources of energy, cures for disease, improvements in agriculture, and new ways to facilitate human cooperation are general goals that are obviously worth striving for. What does such a claim mean? It means that we have

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> every reason to believe that the pursuit of such goals will lead upward on the slopes of the moral landscape.

Harris is certainly right that we should try to discover and to promote what is in everyone's interest, but that will not eliminate conflicts of interest, and the hard choices that come with them.

The most interesting problem posed by Harris's book is the relation between a naturalistic conception of human beings, informed by evolutionary theory, and the correct understanding of morality. Harris urges that we use scientific knowledge about humans to discover what will maximize their well-being, and thereby to discover the right way to live. This is an instrumental use of science, starting out from his basic moral premise. But what about the scientific understanding of our moral responses themselves?

The problem, briefly, is that if our moral responses depend substantially on innate dispositions that have an evolutionary explanation, they might have served the reproductive fitness of our ancestors, but they do not have much authority as guides to the objective truth about how we should live—if there is any such truth. Harris firmly rejects this debunking move:

> It is important to emphasize that a scientific account of human values—i.e. one that places them squarely within the web of influences that link states of the world and states of the human brain—is not the same as an *evolutionary* account. Most of what constitutes human well-being at this moment escapes any narrow Darwinian calculus. While the possibilities of human experience must be realized in the brains that evolution has built for us, our brains were not designed with a view to our ultimate fulfillment. Evolution could never have foreseen the wisdom or necessity of creating stable democracies, mitigating climate change, saving other species from extinction, containing the spread of nuclear weapons, or of doing much else that is now crucial to our happiness in this century.... As with mathematics, science, art, and almost everything else that interests us, our modern concerns about meaning and morality have flown the perch built by evolution.

But what mental wings have allowed us to fly this perch, and how do they enable us to reach the truth? Clearly, a concern for the well-being of all sentient creatures does not lend itself to Darwinian explanation. Harris believes that, like much else, it is something we can arrive at by reason:

> Factual beliefs like "water is two parts hydrogen and one part oxygen" and ethical beliefs like "cruelty is wrong" are not expressions of mere preference. To *really* believe either proposition is also to believe that you have accepted it for legitimate reasons.... When we believe that something is factually true or morally good, we also believe that another person, similarly placed, should share our belief.

And:

> Morality, like rationality, implies the existence of certain norms—that is, it does not merely describe how we tend to think and behave; it tells us how we *should* think and behave. One norm that morality and rationality share is the interchangeability of perspective.... This is why one cannot argue for the rightness of one's views on the basis of mere preference.

This is very plausible, and the interchangeability of perspective has an obvious connection both with scientific objectivity and with the impartiality of moral standards; but all this leaves us with the question whether the claims of reason and objectivity can be reconciled with an evolutionary understanding of human capacities, and if not, what alternative or supplementary explanation there might be. I believe that this is one of the hardest problems for a secular conception of human nature.

Harris does not take up this problem, but he is concerned about a related one. He needs to resist the objection that moral judgments do not come from reason at all but are emotional responses, and that the reasons people offer for their moral beliefs are after-the-fact rationalizations rather than true explanations. He finds this view in the work of two psychologists, Jonathan Haidt and Joshua Greene, who have a very different conception from Harris's of what it is to apply science to morality.

Haidt relies primarily on psychological research, whereas Greene observes the blood flow in different parts of people's brains when they answer morally loaded questions. Both of them identify a substantial subset of moral judgments that are associated, affectively and physiologically, with emotion rather than with rational thought. We are all familiar with such gut reactions, such as my feeling that Lieutenant William Calley (who initiated the My Lai massacre) should have been executed. But even though they are not the product of reasoning, those who have them will produce elaborate justificatory reasons if asked why they are correct. Haidt and Greene both hold that these are confabulatory responses, made up to satisfy an illusory norm of rationality. The real explanation is generally some combination of evolutionary psychology and social conditioning.

Actually, their views are more complicated. Greene attributes only some moral judgments to unreflective emotion—mostly those that express strict prohibitions—and both Greene and Haidt seem to think that once we recognize the situation we may be able to distance ourselves from our gut reactions and make decisions more reasonably. But Harris focuses on the skepticism about moral truth that these anti-rationalist theories allegedly support. Greene writes: "Moral theorizing fails because our intuitions do not reflect a coherent set of moral truths and were not designed by natural selection or anything else to behave as if they were.... If you want to make sense of your moral sense, turn to biology, psychology, and sociology—not normative ethics." And Harris replies: "This objection to moral realism may seem reasonable, until one notices that it can be applied, with the same leveling effect, to any domain of human knowledge. For instance, it is just as true to say that our logical, mathematical, and physical intuitions have not been designed by natural selection to track the Truth. Does this mean that we must cease to be realists with respect to physical reality?"

Harris believes that, as with science, so in moral thought, we can decide what to believe by testing our initial responses for consistency and coherence, and by seeking, through interpersonal discussion, norms that can be shared from multiple perspectives. He believes that some powerful moral responses, such as the impulse to retributive punishment, are clearly irrational, but that others, such as partiality toward one's offspring, can be accommodated within the broadly utilitarian framework that he identifies with moral reason. About some of the most puzzling and powerful moral intuitions—for example, that it is wrong to kill one innocent person even if it is the only means of saving the lives of several other people—

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he has little to say. And this philosophical chestnut stands for a pervasive problem of the relation between individual rights and the collective good in a complete morality.

The deep question remains. Once we recognize the ways in which we have been formed by forces beyond our control, what resource can we nevertheless call on within ourselves in deciding which of our instincts to transcend? Morality, like science, is a process of collective self-reconstruction of human consciousness and human beliefs. Harris's heart is in the right place, and perhaps his spirited denunciation of moral skepticism will do some good; but it leaves us with difficult moral problems that require more careful treatment than he has time for. ◆

Eric A. Posner
POTUS-PHOBIA

THE DECLINE AND FALL OF THE AMERICAN REPUBLIC
By Bruce Ackerman
(Belknap Press, 270 pp., $25.95)

Bruce Ackerman, a professor at Yale University Law School, does not mean that the United States has collapsed like the Roman Empire, or that it will. His title refers to the American constitutional traditions of limited government—what the Founders and some modern legal scholars call the "republican" form of government. Ackerman thinks that the presidency has burst these limits: it has become too powerful, and eventually it will be seized by an ideological zealot who will abuse executive powers. Ackerman does not predict what this zealot will do, nor when he will take power. The title and much of the text imply that the end times are here, or are inevitable unless we take strong actions today, but Ackerman commits himself only to the proposition that a zealot will take control in the foreseeable future with a probability greater than zero.

Ackerman's best but least original argument is diagnostic. In 1973, Arthur M. Schlesinger Jr. published a book titled *The Imperial Presidency*, which argued that the American presidency had obtained powers far beyond those dreamed of by the Founders, and that this expansion of executive power at the expense of Congress and the judiciary threatened American freedoms. Schlesinger's argument was nothing new, but his book was lucid and comprehensive, and in the aftermath of Watergate it struck a nerve. Clinton's impeachment dealt a setback to the thesis, leading Schlesinger himself to write that the executive had become too weak. But George W. Bush's presidency gave new life to it (causing Schlesinger to reverse himself yet again), and Ackerman is one of dozens of academics who have been inspired to extend Schlesinger's argument.

The story is familiar. Americans began the Revolution by citing (and exaggerating) the executive tyranny of the British king, but by the time of the Constitutional Convention their experience with state legislatures had convinced them that it was legislative tyranny that posed the major threat. The Founders thus created elaborate checks and balances constraining the national legislature, but they left the executive office ambiguous, in this way papering over disagreement about the proper scope of executive power. A group of strong executives in the eighteenth and nineteenth centuries—Washington, Jefferson, Jackson, Polk, Lincoln—set the foundation for the imperial presidency of the twentieth; but for most of the nineteenth century the presidency was not a powerful office. Congress played the central role in the national government, and the state governments remained, in most domains, the primary loci of political power.

All this changed in the twentieth century, when the imperial presidency was institutionalized. Congress, the federal judiciary, state governments, and other institutions gradually acquiesced in the expansion of the national executive. The growth in executive power was partly driven by crises—in particular, the economic crisis of the Depression and the military crisis of the Cold War. Both events made clear to the public what sophisticated observers, and especially reformers, had already realized: that the major issues of the day were national and could not be addressed by the states. They were complex and rapidly changing in a way that drew on the institutional advantages of the president, who, unlike Congress and the judiciary, can order about cadres of specialized administrators, police, and soldiers as problems emerge and recede. Advances in technology—communications, transportation, information processing—also favored the executive by giving it the power to appeal to the public and making it the focus of developing national media.

In retelling this story, Ackerman dwells on recent technological and institutional developments that create dangers beyond those identified by Schlesinger in 1973. He believes that presidents use modern polling techniques and the social scientist's bag of tricks to manipulate public opinion. Journalism and traditions of journalistic objectivity have eroded. Joining the technology panic du jour, Ackerman argues that the Internet polarizes the masses, creating conditions in which a large segment of the public could lose its senses and vote an extremist into office—a possibility enhanced by the Electoral College system, which permits a popular minority to elect the president. And thanks to the replacement of old-style party conventions with the modern primary system, political professionals no longer exercise the moderating influence on the public that they did at an earlier time.

Meanwhile, the president increasingly issues signing statements when he signs legislation, which say that a statute will be interpreted so as to avoid violating the executive's constitutional powers. He relies on the Office of Legal Counsel to provide legal rationalizations for his actions, and in those rare instances when the loyalists in the OLC refuse, he can always turn to his super-loyalists in the Office of White House Counsel to supply the legal rubber stamp.

As a result of these changes in technology, institutions, and public sentiment, the modern president has a great deal more power than presidents in the past to implement his policy preferences, unchecked by other agents. In addition, ordinary people have more direct control of who is elected to the presidency. This latter development might sound good, but in Ackerman's view it is not good at all: people can easily be swept up in a populist frenzy and elect a charismatic extremist rather than a middle-of-the-road professional politician.

But if Ackerman is right that people have more direct control of who is elected, then his worries that the executive has become more powerful are less persuasive. In several places he argues that the modern executive is "lawless," citing

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Watergate, Iran-Contra, and the Bush administration's counter-terrorism policies. But this is just to repeat the descriptive thesis in a negative register. Lawyers who defended Bush's counter-terrorism policies did not believe that he acted lawlessly; they believed that he derived authority from the Constitution that permitted him to ignore statutes inconsistent with national security. The complaint about lawlessness just begs the question of what the Constitution means—and Ackerman's own account supports a "living Constitution"–style argument that the executive has evolved beyond the boundaries imagined by the Founders.

Ackerman also claims that American political institutions were designed to ensure that political change occurs at a slow pace. Policy change must take place piecemeal, as staggered elections gradually populate the presidency, the House, and the Senate with like-minded people, and then, after further delay, the judiciary with presidential appointees. A powerful executive can effect change rapidly, in violation of this tradition. Yet Ackerman does not try to prove that slow political change is better than fast political change. Indeed, he praises the British parliamentary system where policy can change on a dime because (typically, although not always) the head of government and the legislative majority are controlled by the same party. Thatcherism was a revolution because Thatcher's party controlled parliament. Reagan had to contend with a hostile Congress, and so his revolution was not nearly as radical.

Perhaps, for this reason, the dominant worry in Ackerman's book is the fear of extremism—that an extremist will seize the presidency and stay in power by manipulating public opinion and exploiting the institutional powers of the modern executive. But Ackerman provides no evidence that this will happen. He does not claim that any president in the last forty years—or ever—has been an extremist. Ackerman worries that under the modern system for electing presidents, sitting governors and senators cannot run for election because they are too busy, leaving the field open to crazies who do not have a job. Yet in our last election, most of the major candidates—Obama, Biden, Clinton, McCain, and Palin—were sitting governors or senators.

The arguments about Internet polarization on which Ackerman relies have recently provoked a backlash, with the latest social science evidence suggesting a more complex story. People sample an ideologically diverse array of websites. They are exposed to a far greater range of opinion than existed in an era in which people received their ideas from the nightly news, the daily newspaper, and face-to-face interaction with neighbors and office-mates. Thanks to the Internet and the modern educational system, Americans are more informed than they were during the Founding era and the New Deal. Journalism has suffered reversals in the last thirty years, but it is far more objective, sophisticated, and skeptical than at any earlier time in American history.

While it is true that presidents try to manipulate public opinion, they do not do a good job at it. New technology can be manipulated by the opposition as well as by the incumbent. And the very ease with which the president commands communicative resources has, in jujitsu fashion, heightened public suspicion about his intentions. Our current president cannot convince one-quarter of the population that he was born in the United States! Presidential popularity ratings go up and down like those of anyone else; and the presidency does not do as well in polls as the Supreme Court, which does not rely on pollsters, image-makers, and political consultants in order to mold public opinion.

Signing statements, the Office of Legal Counsel, and the White House Counsel's Office are fairly recent innovations, but they are also small beans—vastly less important than the other sources of executive power, such as control over the Army and the regulatory apparatus. Hardly anyone takes signing statements seriously—they have no formal legal effect; and the Office of Legal Counsel and the White House Counsel's Office are tiny advice-giving institutions that derive their limited authority from other parts of the government (the OLC from the attorney general's office, to which it gives advice, and the White House Counsel's Office from the president himself). They are the result of rearguard actions undertaken by a series of presidents in response to Congress's efforts to impose legal constraints on the presidency. Before the post-Watergate reform statutes of the 1970s, presidents were under fewer legal constraints; their weaknesses derived from political expectations. As political expectations for the president increased and Congress imposed greater restrictions on the president (or, more often, gave the president new powers that were subject to legal limitations), it became necessary for the president to hire numerous lawyers to guide him through the intricate legal maze in which he had been placed.

Another target of Ackerman's ire is the much-praised Goldwater-Nichols Act of 1986, which greatly reduced the problems of inter-service rivalry by concentrating military authority in the chairman of the Joint Chiefs of Staff. Ackerman argues that the replacement of squabbling service chiefs with a single military leader has given the military a stronger influence on American policy. He claims without evidence that generals exercised malign influence over Bush's Iraq policy and Obama's Afghanistan policy, and even warns of something like a military coup—a "constitutional crisis" in which the military defies the government or intervenes inappropriately, even the reduction of the president to a "figurehead." This "Seven Days in May" argument may strike some readers as paranoid. Bush and Rumsfeld pushed the military around; Ackerman claims that the military retaliated by publicly criticizing Rumsfeld, but Rumsfeld's ouster after his disastrous performance was a foregone conclusion. And although Ackerman wrote his book before Obama effortlessly destroyed the career of the highly regarded General Stanley McChrystal, whose disrespectful comments about the Obama administration received the support of no serious person inside or outside the military, this episode reflects poorly on Ackerman's predictive powers.

On the other hand, Ackerman himself says that "the prospect of presidential push-back will itself serve as a powerful deterrent, reducing the likelihood of some of the darkest scenarios to near-zero," so maybe Ackerman does not believe his own thesis. And for good reason. During the two most stressful periods of American history—the Civil War and the Great Depression—no one believed there would be a military coup. Roosevelt's scariest rivals—Huey Long, for example—were all civilians. Some historians speculate that a military coup was imminent when the hugely popular General Douglas MacArthur was fired by the hugely unpopular President Harry Truman. Yet after the parades, MacArthur was quickly revealed to be unfit for presidential office, and the episode ended in farce. The Founders worried about military takeovers by charismatic generals because of Julius Caesar and Oliver Cromwell. But two centuries and more of subsequent experience on American soil must count for something. Americans admire the military, but they have never turned to the military for governance, unlike people in most other countries.

In discussing civilian-military relations, Ackerman's real worry emerges as the fear of excessive influence by the military on

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politics—akin to Eisenhower's warning about the military-industrial complex. He may well be right, but this has little to do with extremism and the decline of limited government. Indeed, the prospect that the president might become a figurehead for the military suggests the opposite concern—that the presidency is too weak, not too strong. A similar tension appears elsewhere in the book, when Ackerman frets about the filibuster and Senate holds, which prevent the president from implementing his legislative program and making appointments. These institutional obstacles weaken the president; the elimination of them would strengthen an executive that, in Ackerman's view, already has too much power.

Even if Ackerman is right that there is a greater chance that an extremist will become president today than in the past, he needs to show that the risk is great enough to justify a restructuring of the government that would weaken the executive's power to do good. Surely the executive has become a powerful institution because Americans want an activist government and Congress has usually been passive. Presidents have been on the right side of history more often than Congress has; and they also stand up well against the Supreme Court. With great power to do good comes great power to engage in abuse, of course. But there is no way to reduce the risk of abuse to zero without depriving the executive branch of all effectiveness. Should the president be stripped of important powers so that the "near-zero" risk of a military coup will be reduced to nearer-zero? Ackerman scoffs at this question but does not answer it.

Instead he moves on to proposals for reform. You would think that the "decline and fall" of republican institutions would call for radical reform, but Ackerman rules out what he regards as politically infeasible, regretfully commenting that it would be impossible to abolish the presidency and replace the American system with a parliamentary system. He thus confines himself to mostly small-bore reform proposals, which tumble out like an avalanche. All major White House staffers will be subject to Senate confirmation so as to limit the power of toadies, partisans, and ideologues. A Presidential Commission on Civil-Military Relations will establish new canons of ethics that will discourage military officers from meddling in politics. The chairman of the Joint Chiefs of Staff will no longer be permitted to attend National Security Council meetings, except with the permission of the secretary of defense. A new statute will give the president the power to declare emergencies and act unilaterally to counter a threat, but the emergency will end unless Congress periodically renews it in a system that requires larger majorities as time passes. A Supreme Executive Tribunal, composed of independent judges, will evaluate the president's assertions of executive authority when they are challenged by members of Congress. A National Endowment for Journalism, financed by the government, will transfer funds to news organizations that publish articles on the Internet that readers electronically vote for. On Deliberation Day, which will be held two weeks before presidential elections, groups of citizens will meet and deliberate about the merits of presidential candidates. States will agree to cast their electoral votes for the presidential candidate who wins the national popular vote.

This eccentric jumble of proposals is too ambitious and not ambitious enough. Few if any of them seem politically realistic, yet even if all of them were implemented, they hardly seem adequate to halt the decline and fall of the American Republic. The United States faces many problems today, and the public continues to look to the president for solutions. They do not want to abolish or to restrict the office; they want it occupied by a competent person with access to its full powers. Watergate, Iran-Contra, and Bush's war on terrorism—which are pretty much all that Ackerman offers as evidence of a dysfunctional presidency—just do not add up to a case against a system of executive primacy that is the best hope for addressing the massive economic, environmental, and military problems that beset us. Ackerman's fear that an extremist will seize the presidency has no political resonance—not even in our undeniably inflamed era—because nothing like that has ever happened in the United States. And the fact that the presidency used to be a weaker office is a matter of indifference to a practical-minded public that reveres the Founders but disregards their antique political trepidations.

The executive has evolved to its present state because it is the one political institution that can address modern problems. The clumsy, many-headed Congress is hampered by its over-elaborate structure and its senatorial half, where the threshold for action is so high and senators from small states have excessive power. The courts are too weak, passive, and decentralized. State governments are too small. The military lacks people's trust, at least as far as civilian governance is concerned, because it is not a democratic institution. Precisely because the Founders created an executive office with ill-defined powers, this office could rise to meet modern challenges. James Madison's vision of checks and balances has given way to a system of executive primacy, but rather than leading to tyranny, as he feared, democratic politics has—so far—kept the American president, sometimes for better and sometimes for worse, under control. ◆

Gary J. Bass
THE OLD NEW THING

THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY
By Samuel Moyn
(Belknap Press, 337 pp., $27.95)

In 1807, in Yorkshire, activists hit the campaign trail for William Wilberforce, whose eloquent parliamentary fight against Britain's slave trade had won surprising success. "O we've heard of his Cants in Humanity's Cause/While the Senate was hush'd, and the land wept applause," they sang. And their chorus was, "Wilberforce is the Man, our Rights to maintain,/The longer we prove him,/The better we love him;/We'll support him for Yorkshire again and again." In 1898, Émile Zola was galvanized by the persecution of Captain Alfred Dreyfus, a French Jewish officer falsely convicted of treason, and in *"J'Accuse"* he proclaimed that "it is a crime to poison the small and the humble, to stoke the passions of reaction and of intolerance, while hiding behind odious anti-Semitism, of which the great, liberal France of the rights of man will die if not cured." In 1919, Woodrow Wilson, stumping for the League of Nations, told a crowd in Iowa about Europeans suffering under imperialism: "They had felt the mastery of those whom they

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had not chosen as their masters. They had felt the oppression of laws which did not admit them to the equal exercise of human rights." And in his inaugural address in 1961, John F. Kennedy proclaimed that his generation of Americans was "unwilling to witness or permit the slow undoing of those human rights to which this nation has always been committed, and to which we are committed today at home and around the world."

What, if anything, do all these moments have in common? Separated by decades and borders, they obviously are not all the same. But it is equally obvious that there are some links. All these people were struggling against certain gruesome horrors. They all wanted us to care about the torments of victims, even unfamiliar and distant ones. They invoked a universalistic conception of humanity, making uncomfortable demands on our empathy. They sought to infuse morality into government policy. Some observers today will note larger or smaller continuities, but it is not hard to see in them—and there are more where they came from—something resembling a liberal tradition promoting human rights.

But all these stirring snapshots are irrelevant, Samuel Moyn would say. His central argument in *The Last Utopia* is that the human rights movement is a newfangled and utopian creed, without any real historical antecedents before the mid-1970s. "Over the course of the 1970s," he writes, "the moral world of Westerners shifted, opening a space for the sort of utopianism that coalesced in an international human rights movement that had never existed before." Moyn offers a new "alternative history of human rights," which denies them any pedigree before our time. The universalism in Greek philosophy? "Of no real relevance." The Enlightenment's rights of man, enunciated in the American Declaration of Independence and the French Declaration of the Rights of Man and Citizen? "Strikingly distinct from contemporary human rights." The Declaration of Independence? "Not really about rights." Citizen campaigns for rights for women, workers, Jews, blacks, and immigrants? "More obfuscating than illuminating." The shocked aftermath of World War II, and the Universal Declaration of Human Rights? "A funeral wreath laid on the grave of wartime hopes." Anti-colonialist appeals to human rights? "A wholly different conception." And so on.

Moyn is challenging the widespread view, in history and in social science, that the lineage of human rights goes back rather a long way before disco. (Even disco had roots.) The mass of histories showing otherwise are not to be taken too seriously, Moyn contends, because they were authored by people who, while perhaps benevolently motivated by their own lights, are today's equivalent of religious dogmatists. As Moyn puts it:

> Historians of human rights approach their subject, in spite of its novelty, the way church historians once approached theirs. They regard the basic cause—much as the church historian treated the Christian religion—as a saving truth, discovered rather than made in history. If a historical phenomenon can be made to seem like an anticipation of human rights, it is interpreted as leading to them in much the way church history famously treated Judaism for so long.... Meanwhile, the heroes who are viewed as advancing human rights in the world—much like the church historian's apostles and saints—are generally treated with uncritical wonderment. Hagiography, for the sake of moral imitation of those who chase the flame, becomes the main genre. And the organizations that finally appear to institutionalize human rights are treated like the early church: a fledgling, but hopefully universal, community of believers struggling for good in a vale of tears. If the cause fails, it is because of evil; if it succeeds, it is not by accident but because the cause is just. These approaches provide the myths that the new movement wants or needs.

Moyn, by contrast, aims to "understand more honestly how and when human rights took shape."

This comes at the very beginning of the book, and everything that follows is framed by what Moyn sees as the pietism of these myth-makers. He takes shots at superb historians, including Lynn Hunt and Paul Kennedy, but if Moyn is serious about his charges against those "almost unanimously" producing such "church history," he would seem to be calling into question the scholarship—and, at least for some, the intellectual integrity—of a vast, disparate array of distinguished writers: historians (Micheline Ishay, A. W. Brian Simpson, Jay Winter); political theorists (Kwame Anthony Appiah, Ronald Dworkin, Sankar Muthu); political scientists (Stephen D. Krasner, Andrew Moravcsik, Beth Simmons); legal scholars (Ryan Goodman, Martti Koskenniemi, Jenny S. Martinez, Martha Minow, Richard Primus); and many more. (I am one of them. I have written two books on this stuff, one of which was the subject of an unappreciative essay by Moyn in *The Nation*. At least I'm in good company.)

Moyn is intelligent and erudite, and he has put a great deal of effort into his revisionism. But the results are sufficiently unconvincing that, in the end, his book winds up more as a reminder of how solid and subtle the preceding histories of human rights actually are. It turns out that there is still a longer historical view for understanding human rights.

What "church history" exactly? Many of the books that Moyn dislikes are actually full of nuances and defeats, replete with hypocrisy and human frailty, but without a sense of the inevitable and over-determined victory of saints. Some of this complexity comes from the authors' archival research, reporting, and travel around the world. (Moyn barely touched any archives, looking only at the papers of some American Jewish activists.) Adam Hochschild, for instance, in *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire's Slaves*, a gripping book on the British fight against slavery and the slave trade (whose title Moyn gets wrong), sees nothing inevitable about the victory of abolitionists: "Their story is not a simple one, but a ragged and untidy epic that did not unfold in the orderly way they hoped for." It is true that Hochschild does not hide his satisfaction that slavery was halted, but that seems perfectly appropriate.

Moyn also blasts Mary Ann Glendon's *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, a splendid history of the origins of the Universal Declaration in 1948, as a typical "story of breakthrough, triumph, and uplift that screens out the most interesting features of the period." Instead, Moyn argues that great power diplomacy was more important than human rights in the early years of the United Nations. But the reality is that Glendon got there first: she takes it as a general rule of politics that power trumps conscience, argues from the start that the "human rights project was peripheral" to big power diplomacy in creating the U.N., and refers often to Cold War tensions.

About Samantha Power's *"A Problem from Hell": America and the Age of Genocide*, Moyn declares that it "fails to reflect on the very recent conditions for the possibility of its own moral position and energy." Power's magnificent book, based on scholarship and personal experience covering the slaughter in Bosnia, is an almost entirely maudlin tale. From Wilson

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to Clinton, president after president systematically lets genocide go on—including Jimmy Carter in Moyn's golden 1970s, who had Cambodia on his watch. True, there are some lonely "upstanders" calling out for action against genocide, but they are almost invariably defeated and humiliated. If this is "church history," they would be weeping in the pews.

Moyn's book omits a great deal. Cesare Beccaria's famous fight against torture is not here. Neither is the mobilization against the Armenian genocide. He breezes past the interwar minorities treaties. Not once does he mention Nelson Mandela, who invoked the Universal Declaration of Human Rights in his famous Rivonia trial speech in 1964. Most remarkably, even as Moyn decries "deeply selective history," his book ignores two really colossal chunks of pertinent history: the anti-slavery movement and the development of the laws of war.

It is a commonplace that the human rights movement hearkens back to the anti-slavery campaigners, both for their expansive empathy and their organizational innovations. David Brion Davis, the great historian of the subject, called it "the world's first successful if costly movement for human rights." In part due to pressure from this activism, Britain—which had dragged more than three million innocent Africans across the Atlantic—ended the slave trade in 1807, and then in 1833 abolished slavery in its colonies. France and Denmark passed emancipation laws in 1848; Alexander II freed Russia's serfs in 1861; America's bloody Civil War led to the end of slavery for four million African Americans; Cuba abolished slavery in 1886, and Brazil did likewise in 1888.

The movement rested on empathy with suffering and dying slaves who were far away, culturally unfamiliar, and had dark skin in an era of ferocious racism. Davis remarked that "the British had always represented the abolition of slavery and especially the suppression of the slave trade as objectives of universal value to humanity, transcending the interests of any religion, class, or nation." That is institutionalized today in the Universal Declaration of Human Rights, which bans slavery and the slave trade. No doubt, there are productive debates about how much the anti-slavery campaigners had to do with human rights today, and how much their mobilization resembles more recent activism. But Moyn does not bother with any of this: he dismisses in two sentences this extraordinary story of human emancipation.

Moyn's other huge omission is the laws and customs of war. States are at their most lethal at war, and least likely to respect the legal claims of other humans. That is why restraints on wartime governments are so important and so fascinating. The concept of "crimes against humanity" reveals a universalistic impulse in international law. And yet Moyn writes of the Geneva Conventions only once, and of Hague law not at all. Nor does he discuss the Tokyo War Crimes Tribunal or the Eichmann trial. He only glancingly mentions Nuremberg.

Nuremberg is a striking case of how rights talk made a real difference. At first, Franklin Delano Roosevelt's administration planned to shoot the top Nazis without trial, which would have been wildly popular with the American public. But Henry Stimson, a Republican lawyer serving uneasily as secretary of war, demanded real trials. No danger of hagiography here: Stimson interned Japanese Americans, failed to take steps to stop the Holocaust, and unleashed fiery devastation on Japanese civilians in city after city. Still, here he had a view of rights that did not apply only to Americans. He thought that a successful relationship with Stalin would rely on a Soviet implementation of "a constitution with a bill of rights like our own." Stimson wrote to Roosevelt that the German leaders must get a trial with due process: "Such procedure must embody, in my judgment, at least the rudimentary aspects of the Bill of Rights." After fierce Washington infighting, Stimson won out. He did not much care about the Holocaust, but Robert H. Jackson, the Supreme Court justice who led the American prosecution, wrote of "this program of extermination of Jews and destruction of the rights of minorities" as part of the Nazi plan for aggression. And yet somehow Moyn offers an entire chapter on international law that leaves out Nuremberg.

Of course, human rights did not spring fully formed from the ground. Moyn, an intellectual historian, concentrates on ideas. But the actual story of human rights has been driven at least as much by real-world politics and economics—notably, by the rising and falling strength of liberal democracies. In an important book that Moyn never mentions, Samuel P. Huntington identified three sweeping waves of democratization across the world. Democracy and individual freedoms at home are not the same thing, but Huntington argued they go extremely closely together. Huntington's overview was systematic and global, where Moyn's is impressionistic; and it paints a very different picture of how freedom spread.

The first wave of democratization, long and slow, was rooted in the American and French Revolutions, with liberal ideals and institutions spreading to Switzerland, Italy, and Argentina. After World War I, successor states to the Russian, Austro-Hungarian, and German empires followed suit. But from 1922 until 1942, especially during the Great Depression, the tide turned: democracy withered in Spain, Poland, Greece, the Baltics, Portugal, Brazil, Argentina, Italy, and Germany. Nazi Germany killed freedom and democracy in Czechoslovakia.

The Allied victory in World War II made possible a second great wave of democratization and liberalization, from 1943—as Hitler's battlefield fortunes turned after Stalingrad—to about 1962. The victorious Western powers built up postwar liberal democracy in West Germany, Japan, Italy, Austria, and South Korea. (For its part, the Soviet Union trampled steps toward liberalism in Hungary in 1956 and Czechoslovakia in 1968.) Turkey and Greece moved toward democracy, as did Brazil and Costa Rica. Some of the new post-colonial states managed to sustain liberal democracy, such as India, Botswana, and Israel; others, such as Nigeria, started out democratic but did not endure. In 1949, Nnamdi Azikiwe, who would become the first president of Nigeria, then under British colonialism, told a London audience that "we are denied elementary human rights."

This wave ran out by the early 1960s, with democratic governments in Latin America and Asia collapsing: coups in Brazil and Argentina, authoritarianism in South Korea. Then in 1974, Huntington argued, a third wave of democratization started, surging throughout the 1980s and 1990s: first Portugal, then Greece and Spain; next much of Latin America, from Ecuador to Argentina; the end of emergency rule in India and a return to democracy in South Korea; in 1989, the great liberal revolutions in eastern and

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central Europe; and in 1994, liberal democracy in South Africa.

This is hardly an uplifting tale of historical inevitability, as the many reversals make clear. Some argue that we are living through another such reversal today. Still, despite Moyn's complaints about selective history, that is what the bulk of his own project is: an attempt to downplay the first and second waves of liberalization, while lionizing the early years of the third wave. While he is trying to burst bubbles in the froth, he fails to notice the swells beneath.

When human rights currents cannot be ignored, Moyn tends to define them away. His book often exaggerates today's human rights politics, and then denies a linkage between it and prior history.

Rights talk has changed over the years, of course. Despite their commonalities, there are proper distinctions to be made between humanitarianism, natural rights, civil rights, legal rights, social rights, and human rights. Richard Tuck, in an excellent study of the notion of natural rights going back to the 1350s, finds that many of the early rights theorists could be quite authoritarian, except Grotius. Some natural rights theorists excluded women, blacks, and others from the group of people who naturally possess rights. It would indeed be naïve to draw a straight line from 1789 to 1989.

Yet it is also necessary to read with some subtlety. After the French Revolution and the Napoleonic wars, many Britons avoided the phrase "rights of man" because it smacked of rebellion. In the nineteenth century, British activists often spoke of humanity, freedom, and civilization in their calls to relieve distant suffering. John Russell, the British foreign secretary, wrote privately in 1860 that he hoped that a European intervention against massacres in Syria "may vindicate the rights of humanity, so cruelly outraged in Syria."

We usually think of human rights as being delineated by some combination of universalism, empathy, equality, rule of law, and national or international enforcement mechanisms. But Moyn, instead, prefers to see human rights as an international mass movement working beyond the state system. He sets the bar perplexingly high: "a set of global political norms providing the creed of a transnational social movement." Or "an internationalism revolving around individual rights."

Moyn cannot deny "the meteoric rise of the notion of the 'rights of man' across the second half of the eighteenth century," and he admits that "the conceptual foundation of rights even before the Universal Declaration may have been natural or even 'human' for some thinkers, especially at the high tide of Enlightenment rationalism." But still he insists that the eighteenth century's *droits de l'homme* or natural rights do not count as antecedents: "It is now the order of the day to transcend that state forum for rights, but until recently the state was their essential crucible." He levels much the same charge at human rights claims after World War II.

It is hard to see how Moyn can draw such a bright line. The inherent rights of "all men" canonized in the Declaration of Independence trumped the British state that was violating them. And once a government had declared the rights of man at home, it became easier to see them in others outside its borders—although not always, as the bloodstained career of European imperialism makes clear. In 1793, Jeremy Bentham, a critic of the language of rights, nevertheless found them a useful way to bludgeon the French to liberate their colonies: "What is become of the rights of men? Are you the only men who have rights?" In 1821, Greek rebels asked Americans for help in their fight against Ottoman rule, since the Americans believed "that all should enjoy those rights, to which all are by nature equally entitled."

Since slavery was a global evil relying on trade, its suppression had to be an international effort. David Brion Davis noted that "antislavery had acquired a supranational character during the late Enlightenment and the early years of the French Revolution." Today, of course, there is more international machinery for human rights than in 1776. But even in the present era of globalization, and even for groups that work across borders, the focus is mostly on conditions inside of states. Human Rights Watch recently issued a major report, for example, on police corruption in Nigeria, with relentlessly local recommendations: limiting the inspector general's term to a single five-year span, conducting regular public hearings in the upper and lower houses of the national assembly. The group does make pleas to international organizations, and it runs campaigns on transnational issues like arms trafficking and terrorism, but its overall emphasis is domestic: Malaysia's ratification of a treaty on disability rights, an assault on a South Ossetian activist, three Angolan human rights defenders convicted under a harsh state security law.

The bulk of human rights activism today goes on within national borders, carried out not by cosmopolitans but by citizens struggling for their own rights in their own home countries. On the ground, national human rights defenders are shrewdly aware that repressive governments will accuse them of being foreign stooges. The activists advocate their cause in local idioms. Human rights lawyers know that local enforcement is, with a few exceptions (especially in Europe), the only kind that counts. As Glendon notes, the potency of the tenets of the Universal Declaration of Human Rights has come "mainly through their incorporation into national legal systems." Even the International Criminal Court prefers to have national courts prosecute war crimes and crimes against humanity. I have seen Colombian activists in Bogotá criticizing top Colombian government officials for complicity with the right-wing paramilitaries; Serbian human rights activists in Belgrade pressing for accountability for Slobodan Milošević's wars; and Zimbabwean lawyers in Harare relating with extraordinary precision the ways in which Robert Mugabe has failed to live up to the human rights commitments in his power-sharing deal with the opposition Movement for Democratic Change. These were not deracinated internationalists.

Moyn's argument has a rougher time of it after World War II. His narrative, tightly focused on public discourse soon after the war, overlooks the most salient point: that the defeat of fascism permitted liberalism and democracy to flourish. Japan's new American-imposed constitution car-

Carts

Carts full of hay
abandoned the town
in greatest quiet.

Cautious glances from the curtains.

A morning empty as a waiting room.

The rustling of papers in the archives;
men calculate the losses.

But that world.
Suitcases packed.
Sing for it, oriole,
dance for it, little fox,
catch it.

ADAM ZAGAJEWSKI

—Translated by Clare Cavanagh

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ried extensive provisions defending "the fundamental human rights," including—in about as clear a sign of Enlightenment lineage as one could imagine—the "right to life, liberty, and the pursuit of happiness." But Moyn barely mentions the extraordinary postwar transformation of West Germany, Japan, and Italy into liberal democracies in which human rights could thrive, nor the impressive growth of a zone of European protection of human rights.

Instead he downplays the invocations of human rights by Roosevelt during the war, and in the U.N. Charter and the Universal Declaration of Human Rights; regional human rights instruments such as the European Convention on Human Rights and, in Latin America, the American Declaration of the Rights and Duties of Man adopted in Bogotá in 1948; U.N. campaigns against human trafficking and forced labor, and U.N. efforts at refugee relief; the American civil rights movement; and the Convention on Genocide. He tries to divorce anti-colonialism from human rights, although after independence, the new constitutions of Burundi, Cameroon, Chad, Congo, Dahomey (now Benin), Equatorial Guinea, Gabon, Guinea, Ivory Coast, Madagascar, Mali, Mauritania, Niger, Rwanda, Senegal, Somalia, Togo, and Upper Volta (now Burkina Faso) all included specific references to the Universal Declaration of Human Rights. After a while, even the most generous reader is going to wonder why, if human rights were so irrelevant until the mid-1970s, Moyn has quite so many targets that he needs to try to knock down.

Moyn declares that human rights became an important part of international law "only yesterday." But his account leaves out much. In a 1918 edition of a treatise first published in 1890, Pasquale Fiore, a leading Italian authority on public international law, wrote that "the international rights of man must be considered to be under the collective legal protection of all civilized states." European and American legal authorities such as Fiore, Edwin Borchard, and Hersch Lauterpacht have long argued for the legality of humanitarian intervention. Moyn, trying to minimize the importance of memories of the Holocaust in forging human rights, overlooks a shattering personal story: Lauterpacht, the great British international lawyer and author of the influential treatise *International Law and Human Rights*, which appeared in 1950, lost almost his entire family—including his parents and brother and sister—in the Holocaust, and then worked with steely professionalism for the British prosecution at Nuremberg.

But then the miraculous mid-1970s arrive, and Moyn reverses course. Previously so stingy in acknowledging human rights currents, he now sees them everywhere. To paraphrase Larkin: human rights began in 1973 (which was rather late for me). And relieved of the burden of disallowing previous appearances of human rights, Moyn's book becomes more relaxed and readable—a hint of the much better book that Moyn could have written if he had not set himself such an implausible thesis. He notes human rights activism from the Soviet Union to Chile. He offers insightful sketches of Havel and other eastern and central European dissidents. Dropping his prior unwillingness to view human rights empathy a bit more broadly, he grants that Bernard-Henri Lévy's humanitarian activism against hunger stemmed from a human rights impulse. He even does a little hagiography of his own, doting on Moses Moskowitz, secretary general of the Consultative Council of Jewish Organizations.

Rather than weighing political or economic causes, or developments such as the mass media or globalization, Moyn claims that human rights emerged "in the 1970s seemingly from nowhere" as a new utopian ideology to replace certain exhausted utopianisms. This seems all but unprovable, and while Moyn does not make his case, it is not clear how anyone could. How does one measure "cultural prestige"? And why did other utopianisms expire in the mid-1970s rather than any other years? Moyn writes that Carter's inaugural address in 1977 "put 'human rights' in front of the viewing public for the first time in American history"—overlooking Kennedy's defense of "human rights" at home and abroad in 1961, and Eisenhower's vindication of "man's inalienable rights" in 1953, and Truman's denunciation of "brutal attacks on the rights of man" in 1949.

Here is a better way to think about it. When he reaches the 1970s, Moyn is catching up with what political scientists, since Huntington, have known as the third wave of democratization. This is the element of truth in Moyn's contrarianism. But Huntington gave specific political, economic, and international reasons for this wave, along with the non-material factor of the spread of democratic ideals. The economic growth of the 1960s had built up urban middle classes demanding more freedom. The oil shocks and the economic miseries of the 1970s brought shaky and inept dictatorships to their knees. America, Europe, and the Catholic Church promoted democracy, while Gorbachev's Soviet Union stopped strangling it. (Moyn oddly treats democracy promotion as an "independently developed program" irrelevant to human rights.) And success in one country demonstrated to others how to follow a path to freedom. This is what a more rigorous, worldly explanation looks like.

When Moyn writes that human rights are an emotional "mass utopianism," it does not sound like much of a compliment. "Born in the assertion of the 'power of the powerless,'" he remarks, "human rights inevitably became bound up with the power of the powerful." This poses a final puzzlement. Human rights may be many things, but they are no utopia. Quite the contrary. The human rights movement has been driven not so much by the search for non-existent utopias as by actual collisions with existing dystopias: slavery, torture, genocide, war crimes.

Judith Shklar, another figure whom Moyn scants, offered a wiser understanding—and one more typical of human rights activists. Horrified by the twentieth-century nightmare of totalitarianism and total war, she proposed "the liberalism of fear." Instead of searching for the highest good in life (as Moyn says utopian human rights activists must), her liberalism seeks to avoid the worst evil: cruelty, the intentional inflicting of pain on the weak to attain some goal. This is a global standard only in the grim sense that "the fear of systematic cruelty is so universal": everyone dreads the knock on the door in the dead of night. It leads to a tragic view of political life, full of skepticism and misanthropy. Shklar, herself a Latvian Jewish refugee in World War II, grounded this "entirely non-utopian" liberalism in bitter historical experience. Wanting to protect the individual victim from cruelty, she saw liberalism as a rare and tenuous thing. She offered a suitably minimalist foundation for "a strong defense of equal rights" in a terrifying age—nothing that answers to Moyn's accusation of utopianism.

It has been a long and bleak contest. Even the moments of uplift are pretty grim. During Solidarity's struggle in the 1980s, Timothy Garton Ash quoted an epigram from 1851 by the Polish romantic poet Cyprian Norwid, after the crushed Polish revolts of 1831 and before those of 1863, when freedom seemed an impossibly distant goal: "Colossal armies, valiant generals,/Police—secret, open, and of sexes two—/Against whom have they joined together?/Against a few ideas … nothing new!" ◆

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Washington Diarist

The Deal

Meanwhile, back at the war. "This is how you end these kinds of insurgencies," General Petraeus said a few weeks ago, referring to the fact that senior officials of the Taliban had "sought to reach out" to senior officials of the Karzai government in Kabul. Pardon the impudence, but this is four-star spin. His doctrine of counterinsurgency, which is the intellectual foundation of our war in Afghanistan, holds that the war is over when the population, or most of it, has been persuaded by political, economic, and social development, backed by the intense application of force, that their future lies not with the insurgency but with the government that we are, owing to its commitment to such development, protecting. The role of the American military is to create space on the ground, not at the highest levels, for an indigenous process of reform. But the incipient negotiations between the Taliban and the Karzai government—Americans and Europeans have both facilitated the contacts—can hardly answer to such a description. This is not hearts and minds; this is a deal. Nor is it "reconciliation," except insofar as Kabul and Quetta have reconciled to their shared interest in controlling the post-American era in Afghanistan. Karzai's commitment to democratization and honest governance is a proven farce; he and his regime, or rather, he and his politically empowered family, care only for influence and enrichment. Mullah Omar in Quetta, rather like Yasir Arafat in Tunis many years ago, is worried that his distance from the scene is making him and his establishment irrelevant, and so he wants a way back in. This is not a history-minded peace; it is a bargain, struck over the heads of the Afghan people, for the survival of the secularly corrupt and the religiously murderous. One hears happy talk about a "younger generation" of "pragmatic" Taliban, but it is little comfort that they are better at calculating their interests, since their interests include theocratic tyranny, which is based on their beliefs. General Petraeus would have us believe that the Taliban are being brought to the table by the success of our campaign, that they are "reaching out" because they feel that they are losing, but I am not persuaded. The military news out of Afghanistan is not exactly breathtaking. It is just as likely that the Taliban are "reaching out" because they feel that they are winning. And who can seriously consider that the Taliban's participation in a government in Kabul would be anything but the beginning of a Taliban restoration? The Yeatsian nightmare about the best and the worst applies: this is their second coming. *This* is their pragmatism. It is also the consequence of President Obama's date certain for the end of our military presence in Afghanistan. The president's calendar undid the general's concept. Hearts and minds take time, and time is what the president was not prepared to give. For this reason, we have been incoherent. But not anymore: the objective of our policy is to be out by next summer, so we welcome the deal. This is expedience, not the high principle with which we have justified the war. The administration is right that there is no military solution in Afghanistan. But a union of Karzai and the Taliban is hardly the political solution for which we have been struggling. It is an abandonment of Afghanistan.

But is this so awful, I mean from the standpoint of the United States? Here things get nastily complicated, and no moral satisfaction is any longer to be had. We are in Afghanistan, we have been there for almost a decade, for the sake of our safety—to destroy Al Qaeda and the other terrorist groups that are planning violence against us. The overthrow of the Taliban was the ennobling corollary of a security policy; it was collateral humanitarianism. But why cling to the corollary when the central premise is no longer valid? Everybody agrees that the threat to our security no longer emanates from Afghanistan. Our war drove our enemies into Pakistan, which is unwilling to regard them as its enemies. They have a new haven across the border. So we have been carrying our war there, and by means of drones conducting a new kind of cross-border bombing campaign, and a vicious one. Where does this leave the rationale for our presence in Afghanistan? The humanitarianism is all that remains of it. If the World Trade Center were still standing, would I support an American invasion of Afghanistan to liberate its people from the Taliban? I am not so sure. But perhaps the secondary rationale for our invasion of Afghanistan should now become its primary rationale, as it did in Iraq. When it was discovered that there were no weapons of mass destruction in Iraq—that President Bush took the United States into a major war on the basis of a mistake—our goal in Iraq became its democratization. Some people adopted the new goal cynically, others with integrity. Why not, then, do the same—I mean the integrity part—in post–Al Qaeda Afghanistan? It is sickening to contemplate the prospect of a Taliban restoration, and of our complicity in it. Should our revulsion justify our war?

This brings us to the question of the historical agency of the Afghan people, and to some unhappy reflections on democratization. Democracy is a universal value, or it is no value at all; everyone has a right to be free. Since the love of democracy is a global emotion, it sometimes breeds a certain indifference to the local. Democracy is not everywhere immediately possible because it is everywhere immediately desirable. (This does not mean that the cause should anywhere be renounced by us, only that it should be pursued differently, patiently, with empirical wisdom.) Considered from the standpoint of democratization, Afghanistan is nowhere as promising as Iraq, which still poses its own challenges. Its neglect by Bush notwithstanding, is what we see in Afghanistan really all that the Afghans could have done with, and for, themselves in a decade? What hope is there for liberal ideas and practices in this hardened kingdom of Pashtunwali and *sharia*? What if it cannot be done? Democratizers must be allowed to think such a thought, or else they are mere dreamers. Anyway, our time there is running out. We will be "drawing down." Even if democracy were a sufficient reason for us to stay, we will not stay. The players are taking the play into their own hands, in their way, with our approval. Our business is now in Pakistan. Which is to say, we may soon miss Afghanistan.

Leon Wieseltier

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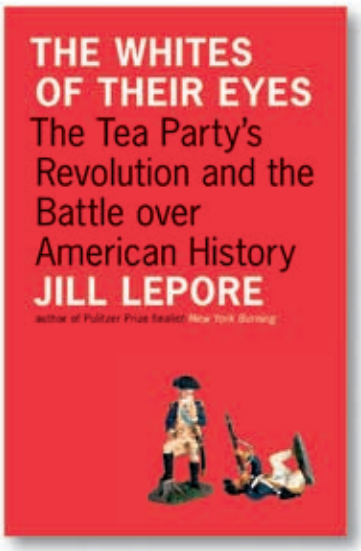

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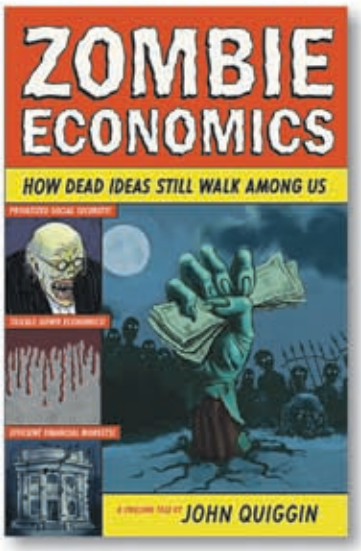

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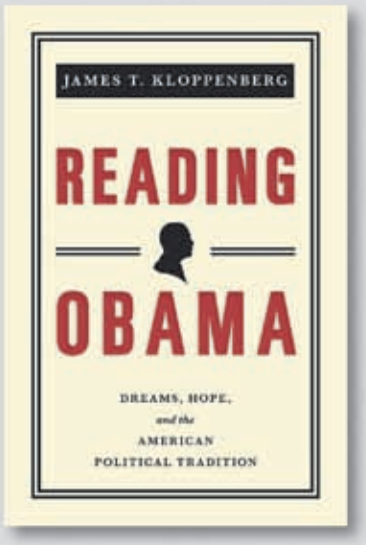

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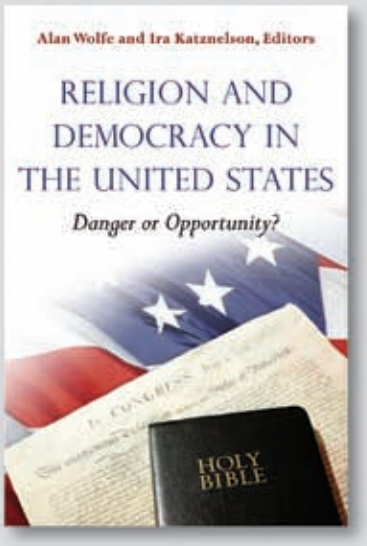

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